Legal-historical Analysis of the Hereditary Position of the Surviving Spouse in Montenegro

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ABSTRACT
This study traces the evolving hereditary position of the surviving spouse in Montenegro, charting its course from the Middle Ages and the socialist period to the present day. Designed to assist those who have lost their partners, this institution has undergone significant transformations, mirroring broader societal shifts. Viewed through a historical lens, this research delves into the impact of Montenegro's culture on the role and legal position of the surviving spouses, scrutinising the state-driven initiatives and norms that have shaped its succession law. As Montenegro transitioned from socialism to a more modern landscape, this institution adapted, responding to changing social structures, economic progress, and cultural transformations. Notably, this shift seems to hark back to earlier times, before liberal socialist laws, favouring traditional views of how men and women relate rather than embracing progress in their roles. Even though modern regulations aim for equality between spouses, the lived experiences of women often reveal persistent discrimination, largely due to entrenched societal expectations. Through a thorough analysis of both historical context and contemporary challenges, this research sheds light on the process of shaping the hereditary position of the surviving spouse in Montenegro and offers a comprehensive legal-historical analysis of the development of the institution. Finally, the study delves into the assessment of whether Montenegro's current succession law, with its specific provisions governing the status of the surviving spouse, could inadvertently perpetuate discriminatory treatment of women in their capacity as surviving spouses. It also explores effective preventive measures and practical approaches to address and mitigate any such discriminatory practices that may persist within the current legal framework.
KEYWORDS
Succession dynamics, gender disparities, hereditary classes, discriminatory spousal practices, legislative framework assessment, cultural normative influence, legal equity evaluation.

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Analiza juridico-istorică a poziției ereditare a soțului supraviețuitor în Muntenegru

REZUMAT
Acest studiu explorează evoluția dinamică a poziției ereditare a soțului supraviețuitor în Muntenegru, urmărindu-i traiectoria din epoca medievală și perioada socialismului până în prezent. Instituția, concepută pentru a sprijini persoanele care și-au pierdut partenerii, a suferit transformări semnificative, reflectând schimbările mai ample din societate. Printr-o perspectivă istorică, această cercetare analizează impactul culturii muntenegrene asupra rolului și poziției juridice a soților supraviețuitori, examinând inițiativele statale și normele care au modelat legislația succesorală. Pe măsură ce Muntenegru a trecut de la socialism la un peisaj mai modern, instituția s-a adaptat, răspunzând modificărilor structurale sociale, progreselor economice și schimbărilor culturale. De observant este faptul că această tranziție pare să reflecte vremuri mai vechi, anterioare legilor socialiste liberale, favorizând viziuni tradiționale asupra relațiilor dintre bărbați și femei, mai degrabă decât îmbrățișând progresul în rolurile acestora. Deși reglementările moderne urmăresc egalitatea între soți, experiențele reale pot dezvălui existența continuă a discriminării împotriva femeilor, în mare parte din cauza așteptărilor sociale. Prin analiza contextului istoric și a provocărilor contemporane, acest studiu evidențiază procesul de modelare a poziției ereditare a soțului supraviețuitor în Muntenegru și oferă o analiză juridico-istorică cuprinzătoare a dezvoltării instituției. În cele din urmă, cercetarea examinează dacă legislația succesorală actuală din Muntenegru și dispozițiile sale speciale privind statutul soțului supraviețuitor ar putea duce la un tratament discriminatoriu față de femei, explorând totodată măsuri preventive eficiente și abordări practice pentru a combate și atenua eventualele practici discriminatorii din cadrul actualului cadru legal.
CUVINTE CHEIE
Dinamica succesiunii, disparități de gen, clase ereditare, practici discriminatorii în căsătorie, evaluarea cadrului legislativ, influența normativă culturală, analiza echității juridice.

I. INTRODUCTION

Montenegro's position within the Western Balkans underscores its historical and legal ties to a region often described as a "*tipping-point*" of disparate influences.[2] The country's past is notably complex, warranting comprehensive scholarly investigation. Any attempt to encapsulate such a multifaceted history within a single text is inherently constrained. Therefore, while the introduction chapter offers a succinct historical overview, it does not aspire to present a condensed history of Montenegro in its entirety. Rather, it seeks to provide the necessary context for understanding Montenegro's historical evolution, thereby illuminating its legal development.

This corner of the Western Balkans was shaped not only by Byzantium and Eastern Christianity but also by the influence of Catholic Italy and Dalmatia. The rising power of Venice—alongside that of Ragusa (Dubrovnik)—exerted a strong presence along the Montenegrin coast and even further inland. This influence culminated in the late 11th

2 See Gale Stokes (1997): *Three Eras of Political Change in Eastern Europe*, Oxford University Press, New York, chapter 1.

century when the ruling dynasty of Zeta, the "*Vojislavljevićs*" (*Војислављевић*), sought formal recognition from Rome, leading to the appointment of an archbishop in the city of Bar (*Бар*).[3] However, the 12th century saw civil war and internal dynastic struggles within Zeta, which the neighbouring Serbian "*Nemanjić*" (*Немањић*) dynasty swiftly exploited.[4] The ascent of the Nemanjićs dynasty marked the end of Zeta's 173-year period of independence, during which it had established a state, Church, and cultural identity profoundly influenced by the Western world.[5]

A pivotal moment in the region's history occurred on 28 June 1389, when Prince Lazar Hrebeljanović (*Лазар Хребељановић*) led the Serbian forces against the formidable Turkish army commanded by Sultan Murat I at the Battle of Kosovo Polje. This historic confrontation became deeply ingrained in the collective consciousness of the Serbian people and, by extension, the Montenegrins. The Battle of Kosovo was instrumental in shaping both Serbian and Zetan historical trajectories. During this period, the Zetans found themselves increasingly isolated, yet they managed to retain their autonomy, aided by temporary alliances that offered fleeting support.[6] In the face of Ottoman rule, Montenegrin society adapted to its circumstances through a system of tribal cohabitation, a structure that endured until the emergence of the theocracy and the subsequent rule by the Petrović (*Петровић*) dynasty in the 17th century.[7] This period witnessed the consolidation of Montenegro's tribal framework, which would remain the bedrock of its societal organisation for centuries. It stands as a testament to the resilience and endurance of the Montenegrin people, who, despite the shifting tides of history, preserved their unique identity and communal traditions.[8]

During their prolonged struggles and coexistence with the Venetians and the Turks—as well as with the Albanians from Bosnia—the Montenegrins absorbed many

3 Zuzana Poláčková, Pieter van Duin: Montenegro Old and New: History, Politics, Culture, and the People, *Studia Politica Slovaca*, 1/2013, p. 61.

4 Hailing from present-day Montenegro, Stefan Nemanja initiated the Serbian royal lineage and the Serbian practice of constructing churches and monasteries. Nevertheless, Zeta held a distinctive position, akin to a sub-state within a state, notably characterized by the prevalence of Catholicism. Over time, the Orthodox Church gradually gained ground in this established religious framework.

5 Elizabeth Roberts (2007): *Realm of the Black Mountain*, Hurst & Company, London, pp. 58–63.; Kenneth Morrison (2009): *Montenegro, A Modern History*, I.B.Tauris & Co Ltd, London&New York, p. 15.

6 John Allcock (2000): Montenegro, in David Turnock, Francis W. Carter (ed.): *The States of Eastern Europe, South-Eastern Europe*, Aldershot, Ashgate, pp. 185–188.

7 Given the broader political context, the necessity for Montenegrin tribes to unite became imperative to evade complete Turkish dominance. In the War of the Holy League, Montenegrins actively backed and cooperated with Venice in its efforts to resist the expansion of the Ottoman Empire. However, this decision backfired, leading to significant repercussions as it paved the way for an extensive Ottoman invasion. This invasion resulted in the occupation of Cetinje and the destruction of its monastery. See Momir Bulatović (2004): *Pravila Ćutanja*, Alfa Kniga, Belgrade, p. 82.

8 Morrison (2009): p. 17.

of their customs.[9] Before achieving full independence from the Ottoman Empire at the Congress of Berlin in 1878, Montenegro took shape as a unified entity through the consolidation of Zeta, Lake Skadar, and Boka Kotorska.[10] This process was symbolically crowned by the enactment of the renowned "*Act of Montenegro and the Hills*" (*Zakon Crnogorski i Brdski/Законик Црногорски и Брдски)* in 1803. Promulgated by bishop Petar I, the leader of the country at that time, this legislative document can be considered as Montenegro's earliest form of a constitution.[11] However, with the outbreak of the First World War, Montenegro was swiftly drawn into the conflict. When Austria-Hungary declared war on Serbia, Montenegro stood in solidarity with its neighbour, disregarding overtures suggesting that Montenegro's neutrality might result in potential territorial gains.[12] This shared historical path with Serbia ultimately shaped the long-standing union between the two nations—a union that endured until the dissolution of the state union of Serbia and Montenegro in 2006.[13]

To elucidate and comprehend the mechanisms of law-making in both medieval and modern Montenegro, it is essential to recognise the aforementioned overlapping influences that have shaped its legal landscape. Despite numerous scholarly reviews addressing the importance of the multicultural background of the Montenegro's legal system, none of the recently published works have undertaken a comprehensive examination of the pivotal role of succession law and its evolution in the context of the Montenegro's diverse social and legal background. A closer analysis reveals that, at least in the case of Montenegro, alternative approaches may lack the precision necessary for a nuanced understanding of historical developments. For instance, two years after the dissolution of the state union of Serbia and Montenegro, the newly independent Montenegro adopted the Inheritance Act of 2008. This legislative reform was expected to sever the remaining ties with the archaic and outdated principles of medieval

9 See Vladimir Jovićević: Uticaj prava primorja na zakonik opšti crnogorski i srpski, *Pravni vijesnik*, 4/1988, pp. 425–430.

10 Marko Pavlović (2013): *Srpsko pravo*, Pravni fakultet, Kragujevac, p. 172.

11 Although the attainment of liberation and independence appeared to be momentous achievements, these ostensibly favourable advancements also ushered in substantial challenges. The swift territorial expansion occurred at a pace that some scholars highlighted as "too rapid", hindering the proper integration of the population from the newly acquired regions into the ethnic core of Montenegro. See Branimir Anzulović (1999): *Heavenly Serbia*, New York University Press, New York, p. 36.

12 Morrison (2009): p. 36.

13 The first 1918 unification—or assimilation, as some contend—of Montenegro and Serbia at the Assembly of Podgorica remains a highly debated topic. Theoretically, this process should have been less problematic than other national mergers due to several reasons: a slim majority supported the union, cultural differences were minimal, language was not an issue, both shared the Eastern Orthodox religion, and they had common myths and symbols. However, controversy surrounds how Montenegro was integrated into Serbia and the subsequent Kingdom of Serbs, Croats, and Slovenes, primarily due to the debated methods employed. The Assembly of Podgorica, seen as a tool of forced assimilation, is a central point in the contemporary Montenegrin nationalist argument. See Srdja Pavlović (2003): Who are the Montenegrins: Statehood, Identity and Civic Society, in *Montenegro in Transition: Problems of Identity and Statehood*, Nomos Verlagsgesellschaft, Baden-Baden, pp. 83–107.

inheritance traditions that had persisted, even through the socialist period. Yet, did it truly achieve this? Or could this legislative shift, paradoxically, have reinstated Montenegro's succession law to a framework reminiscent of medieval succession relations, particularly concerning the hereditary status of the surviving spouse? Moreover, insights derived from socio-empirical studies—briefly discussed in a dedicated subchapter—will aid in unravelling this intricate legal conundrum.[14] The subject remains, and will likely continue to be, a matter of intense debate and controversy. However, above all, it presents an extremely captivating issue from a legal historical point of view. To bridge the existing gap in the literature, this study will explore how the "*zadruga*" heritage[15] as an ingrained perspective on relationships in Montenegro, has contributed to the decline of the hereditary position of the surviving spouse.

This paper is structured into three main sections. The first deals with the medieval period, briefly highlighting key milestones in the development of the institution where necessary. The second addresses the crucial changes that happened after the Second World War, with the imposition of a Soviet-type dictatorship in Yugoslavia—a period in which Montenegro shared the same legal framework as other Yugoslav republics (modern-day Croatia, Montenegro, Serbia, Bosnia and Herzegovina, and North Macedonia). The final section discusses the legal adjustments that were spurred after Montenegro declared its independence from Serbia in 2006. In the conclusion, a critical response to these issues will be presented, accompanied by reflections on the matter within the broader context of *de lege feranda* legislative prospects.

II. MEDIEVAL PERIOD

Montenegrin medieval sources of law offer scant systematic treatment of succession law. As Taranovsky reiterated, the medieval succession law in territories of present-day Serbia and Montenegro was largely confined to scattered provisions and isolated references to inheritance.[16] Until the adoption of Saint Sava's *Zakonopravilo* (*Законоправило*)

14 Jennifer Zenovich: Willing the Property of Gender: A Feminist Autoethnography of Inheritance, *Montenegro, Women's Studies in Communication*, 1/2016, pp. 28–46.

15 The concept of "*zadruga*", named by Vuk Karadžić in 1818, emerged in the scholarly research and social-political discussions of the nascent Balkan nations in the 19th century. It denoted the diverse historical manifestations of the "*complex family organization*" prevalent among the South Slavic peoples in the region. Typically constituted by an extended family or related clans, the zadruga collectively managed property, livestock, and finances. Generally, the eldest (patriarch) governed and made decisions for the family, occasionally passing this responsibility to one of his sons in old age. Given its patrilocal structure, when a woman married, she transitioned from her parental zadruga to her husband's. Members within the zadruga cooperatively laboured to fulfil the needs of every individual in the family unit. About the concept and evolution of zadruga, see Aleksa Jovanović (1896): *Istorijski razvitak srpske zadruge, prinosioci za istoriju starog srpskog prava*, Štamparija Svetozara Nikolića, Beograd.; Živojin Perić (1912): *Zadružno pravo po građanskom zakoniku kraljevine Srbije*, Štamparija Dositije Obradović, Beograd.

16 Teodor Taranovski (2002): *Istorija srpskog prava u Nemanjićkoj državi*, Lirika, Beograd, p. 512. It is worth mentioning that the main sources of law in medieval lands of Montenegro were almost the same as in medieval Serbia due to historical reasons, and they were in force in both lands.

in 1219,[17] succession customs were shaped by a dual influence: indigenous Slavic traditions and legal principles derived from Byzantine law. The oldest known term reliably attested in Montenegrin law to denote bequest is *Zavet* (*Завет*), which appears in Old Serbian translation of Byzantine regulations concerning wills.[18] This expression likely referred to an orally declared last will (nuncupative will), a practice bearing significant resemblance to a formal testament. Consequently, this form of bequest aligns with Petranović's theory of property division, as it aligns with an act of "*distribution*" or "*arrangement*" of assets.[19] Scholars have long posited that, in the earliest times, various Slavic tribes saw property as an indivisible unit collectively owned by the extended family—a principle that was particularly rigid in relation to immovable property.[20] The circumstances may have differed in the case of a limited category of movable, personally owned property. However, such possessions were likely interred alongside their owner, rendering them ineligible for bequest.[21] This familial and property structure suggests that property was preserved within the extended family or *zadruga*,[22]ensuring its transmission to successive generations. Hence, composing a will would have been superfluous, as the estate remained undivided even beyond the following generation.[23] Similarly, the "paterfamilias" of the *zadruga,* called *đed* (*ђед*) or *starac* (*старац*), was not empowered to dispose of communal property independently without the explicit consent of the other adult members—an early manifestation of the principles of co-ownership. Women were barred from inheriting or acquiring property, largely due to the family's concern that allowing women to possess property might lead to the potential fragmentation of family assets particularly if the property were taken outside the family through marriage, divorce or separation.[24] However, historical evidence suggests that individual property disposal was not entirely precluded, even in cases where the heirs and relatives withheld their approval. Certain sources indicate that a portion of personal property, often considered a fraction of the family estate, could be sold, or bestowed upon another individual, frequently between spouses. In such instances, relatives are unable to invalidate this

17 This legal code, created in the early 13th century, is an adaptation and expansion of the early teachings of Saint Sava, combined with Byzantine canonical law and specific regulations tailored for the Serbian Orthodox Church. It encompassed ecclesiastical and secular laws, aiming to govern both religious and civil matters within the territory of today's Serbia and Montenegro.

18 See more in Nomocanon of St. Sava, Urban Code, art. 21 in Miodrag Petrović (1991) (ed.): *Zakonopravilo ili Nomokanon Svetog Save, Ilovički prepis*, Dečje Novine, Gornji Milanovac. On other terms used in Serbian medieval charters to denote the disposal of property in wills, see Aleksandar Solovjev (1928): *Zakonodavstvo Stefana Dušana, Cara Srba I Grka*, Pravni fakulteta, Beograd, p. 138 and following.

19 Branislav Petranovic (1873): *O pravu nasledstva kod Srba*, Rad JAZU, Zagreb, p. 29 and following.

20 Karlo Kadlec (1924): *Prvobitno slovensko pravo*, Izdavačka kuća Gece Kona, Beograd, p. 84.

21 Tamara Matović (2019): Bequeathing in medieval Serbian Law, in Wouter Druwé, Wim Decock, Paolo Angelini, Matthias Castelein (ed.): *Ius commune graeco-romanum: Essays in Honour of Prof. Dr. Laurent Waelkens*, Peeters, Leuven/Paris/Bristol, p. 134.

22 See footnote 14.

23 See Valtazar Bogišić: De la forme dite Inokosna de la famille rurale chez les Serbes et les Croates, *Revue de Droit international et de legislation compare*, 16/1884, p. 17.

24 Petranovic (1873): p. 29 and following.

transaction.[25] Thus, succession during this period served a dual function: it safeguarded the continuity of the traditional *zadruga* property system while simultaneously facilitating a gradual transition towards a more individualised, nuclear family structure.

However, with the promulgation of the *Zakonopravilo* in 1219, Saint Sava broadened the scope of social justice, albeit without achieving full equality between male and female surviving spouses. Notably, while a widow who remarried within twelve months of her husband's death did not see her subsequent marriage invalidated, she nevertheless suffered *infamia* as a consequence.[26] Moreover, she was entirely excluded from inheriting any portion of her late husband's matrimonial estate. Furthermore, her capacity to dispose of her own property was significantly restricted. In the absence of children, she was permitted to bequeath only one-third of her personal estate—specifically, the dowry she had received prior to marriage—to her second husband.[27] The institution of dowry was a well-established practice in Montenegro at that time, serving as a fundamental component of matrimonial arrangements. For instance, Chapter 149 of the Statute of the City of Kotor,[28] dating from the year 1316, bore the title *De dote et parchivio* (*parchivium,* derived from the Greek word προίξ = *prikija*, meaning dowry). This chapter reflects the influence of Justinianic legislation, which regarded the dowry as the wife's property, originating from her *pater familias*.[29] Upon the wife's death, the dowry was to pass to her children; the husband had no right of inheritance over it. In cases where the wife died without issue, the dowry was to be returned to her natal family. Any agreement between spouses granting the husband the right to inherit the dowry, was deemed null and void.[30] Furthermore, according to Dušan's code (*Душанов законик*) of 1349, a surviving wife had no legal claim to inheritance, as she was not recognised within the hereditary order. However, she could be a beneficiary of her husband's will. In practice, the principle of "*usus-fructus*" came into effect concerning the position of the widow: she was permitted to enjoy the use of the property, but only until she remarried, and at no

25 Taranovski (2002): p. 503 and following. This form of the alienation of property is similar to *peculium* in Roman law, which represents the possibility for a person in someone else's power to dispose of their own property without consent.

26 Srđan Šarkić: Family Law in Medieval Serbia, *Glossae, European Journal of Legal History*, 2022, p. 626.

27 Šarkić (2022): p. 626. In this period, Montenegrin legal sources did not contain rules on gifts before marriage and gifts on account of marriage.

28 During the Nemanjić rule, Kotor acquired a level of autonomy, enjoying numerous privileges and maintaining its republican structures. This status is evidenced by a 1301 statute, affirming Kotor's city status under Serbian governance. In the 14th century, the commercial activities of Kotor, also known as *Cattaro* in Latin scripts (in Serbian *Котор, град краљев* /Kotor, city of the King), rivalled the trade of the Republic of Ragusa, provoking envy from the Republic of Venice. Throughout the Kingdom of Serbia and Serbian Empire eras, Kotor retained its prominence as the primary trading port of subsequent Serb states until its decline in 1371 when the Ottomans conquered this land.

29 Ilija Sindik (1950): *Komunalno uredenje Kotora od druge polovine XII do pocetka XV stoleća*, Naučna knjiga, Beograd, p. 130.

30 Stojan Novaković (1907): *Matije vlastara sintagmat: azbučni zbornik vizantijskih crkvenih i državnih zakon i pravila slovenski prevod vremena dušanova*, Državna Štamparija Kraljevine Srbije, Beograd, p. 466.

point could she gain ownership of it. This right, though classified as a *ius in re*, but distinctly weaker than outright ownership, as it excluded *ius abutendi*—the right to dispose of the property. In this respect, it bore a resemblance to the modern legal concept of easements.[31] According to Article 40 of the Code, a nobleman possessed the freedom to dispose of his inheritance property as he saw fit, and it is possible that a spouse might inherit through such means.[32] This suggests that, in the medieval Montenegrin lands, inheritance was primarily viewed through the lens of property division. Considering the fact that a woman's role was perceived as being that of childbearing and maintaining the household, she was not considered a participant in productive labour. Therefore, she was not deemed capable of assuming the burden of property maintenance.

Until the 19th century, courts rendered judgments not only in accordance with established law but also by drawing upon customary practices when these more closely reflected the prevailing societal norms. Alternatively, they sought guidance from other legal sources deemed more suitable for the particular circumstances of a case. This practice persisted well into the period preceding Yugoslavia, at which point specific statutes pertaining to succession matters were formally introduced.[33] Moreover, Montenegro's legal landscape was marked by a fragmented and disorganised system of legal particularism, a condition that played a decisive role in the promulgation of "*Prince Danilo's Code*" (*Danilov zakonik/Данилов законик*) in 1855. This code was established as the primary and exclusive source of private law in Montenegro.[34] Notably, it introduced a significant innovation concerning the legal standing of the surviving spouse. The relevant article reads as follows:

> *"[a] widow, be it sooner or later that she be left without a husband, shall, so long as she taketh no other, enjoy the whole share of her late lord, should she bear no offspring. Yet, should she wed anew, her portion shall be but ten thalers yearly. If children she hath, then shall her due be thus: for a son, one sequin per annum; for a daughter, two. And let it be understood that for as many years as she dwelled with her husband, and for as many more as she abided a widow beneath his roof, so long shall she receive the sum appointed for each case."*

31 Pavlović (2013): p. 134. The easement can be defined as a right of owner of one immovable property (dominant estate) to perform certain activities for the benefit of this property on an immovable property of another (servient estate), or to demand from the owner of the servient estate to refrain from doing something otherwise lawful on his estate.

32 Solovjev (1928): pp. 133–140. Art. 40 of the Dušan's Code read as follows: "*[a]nd those charters and decrees which my majesty hath granted and shall grant, and those inheritances, are confirmed, as also those of the first Orthodox Tsars: and they may be disposed of freely, submitted to the Church, given for the soul or sold to another.*"

33 See Mihailo Konstantinović: Stara "pravna pravila" i jedinstvo prava, *Anali pravnog fakulteta*, 3–4/1982, pp. 540–548. Individual provisions on inheriting were incorporated in the Basic Marriage Law of April 3, 1946, the Law of the Protection of Copyright of May 25, 1946, the Law of Adoption of April 1, 1947, the Basic Law of Agricultural Co-operatives of June 6, 1949, and certain other laws, besides the general Inheritance Act form 1955.

34 This fact is emphasized in the preface of the Prince Danilo's Code: "*[...] this code is being established for the people of Montenegro and Hills serving as an eternal source of legal judgment for the Montenegrin populace.*" See *Zakonik knjaza Danila* (1855). Available at: https://www.ucg.ac.me/skladiste/blog_7137/objava_106772/fajlovi/DANILOV%20ZAKONIK.pdf (accessed on 14.10.2023).

Therefore, according to Article 52, the surviving spouse was granted the right of "*usus-fructus*"; however, should she become a widow, she was entitled to a form of recompense, the amount of which was determined by the duration of her life together with her late husband. This provision represented a compromise between the long-held belief that a woman should not remove property from the family and the emerging principle that she was nonetheless deserving of some form of compensation. From a legal standpoint, this constituted a significant advancement, particularly when viewed in light of the fact that, under the same Code, divorce was expressly forbidden.[35] Articles 47–51 of *Prince Danilo's Code* provide for the rules that govern inheritance, both by operation of law and by testamentary disposition. As may be concluded from Article 52, these provisions adhered to the same rationale that had prevailed in the period before the 19th century.

During the late Middle Ages, a discernible transformation took place within the zadruga system in the Serbian and Montenegrin regions. This evolution became especially pronounced with the enactment of the Serbian Civil Code, which redefined the zadruga from a communal structure—wherein property, labour, and subsistence were shared—into a model more closely resembling the Austrian co-ownership principles. Specific provisions, such as Articles 514 and 521, enabled the disposal of the entire family estate.[36] While some perceived these legal reforms as an attempt to undermine the distinct and deeply rooted role of the zadruga in Serbian and Montenegrin cultural identity, the forces of an emerging market economy gradually eroded its prominence. Nevertheless, the zadruga persisted as a fundamental cornerstone, continuing to shape interpersonal relationships within these societies.[37]

III. THE YUGOSLAV PERIOD (20TH CENTURY)

Having established the historical framework, the following section will focus on changes that took place after Montenegro became part of the Kingdom of Serbs, Croats, and Slovenes in 1918, as well as after Yugoslavia's transition into a socialist republic following the end of the Second World War. Two significant legal acts concerning succession were enacted: the Federal Inheritance Act of 1955 and the Inheritance Act of 1975.

In the aftermath of the Second World War, the former Yugoslavia emerged as a Soviet-type dictatorship, adopting its first socialist Constitution in 1946. Article 1 of the aforementioned Constitution declared that "*all people are equal in rights*."[38] Article 21 reinforced this principle by stating: "*[a]ll citizens of the Federal People's Republic of Yugoslavia are equal before the law and enjoy equal rights regardless of nationality, race, and creed*."[39] The language of these provisions reflects a fundamental ideological shift in both legal

35 Article 67 of the Prince Danilo's Code (1855).
36 Pavlović (2013): p. 132.
37 Pavlović (2013): p. 132.
38 Article 1 of the Constitution of the Federal Peoples Republic of Yugoslavia from January 30, 1946.
39 Article 21 of the Constitution of the Federal Peoples Republic of Yugoslavia from January 30, 1946.

and social philosophy, embodying the worldview that had come to define the new state. This inaugural Yugoslav Constitution was drawn up under the strong influence of the Soviet theory of State and law, and of the Soviet Constitution of 1936. Consequently, it introduced no original doctrinal innovations but did exert a certain technical influence on the first constitutions of several so-called "*People's Democracies*."[40] Once these foundational principles were established, lawmakers sought to devise an Inheritance Act capable of resolving the legal and ethnic particularism that had long characterised this area of law before the socialist revolution. Their objective was to codify comprehensive regulations governing inheritance law, although it is not the first legal instrument to regulate these matters, since post-war legislation in Yugoslavia had already provided for the basic principles of succession.[41] Within the broader framework of general inheritance law, this new Yugoslav legislation exhibited certain distinctive features that set it apart from similar statutes in other countries.[42] It represented the striking synthesis of the new socio-economic order of the country and the *Volkgeist* of the Serbian and Montenegrin people.

In the following discussion, we will reflect on the changes that completely cast an entirely new light on the succession law in Montenegro. Foremost among these was the elevation of the surviving spouse to the first hereditary order, thereby excluding the grandfather, grandmother, and all more remote descendants from inheritance. Likewise, we will analyse other provisions that are in connection with the altered legal status of the surviving spouse, with particular emphasis on their designation as a necessary heir—a development of singular interest. The principal source for this section of our study is the commentary on the Inheritance Act, published in the New Yugoslav Law journal series in 1955.

Under the Inheritance Act of 1955, the first hereditary order consisted of the direct descendants of the deceased—his children, grandchildren, and great-grandchildren—alongside the spouse.[43] The spouse and the deceased's issue, including their descendants, were entitled to equal portions of the estate.[44] However, if the deceased had children from earlier marriages, and the independent property of the surviving spouse exceeded the share which would otherwise be allotted to them in the division of the estate, then the children of the deceased—irrespective of the marriage from which they were born—were entitled to a portion double that of the spouse.[45] To illustrate: if the deceased had two children from his later marriage and one from an earlier union, and his estate was estimated in value at 70,000 dinars,[46] then—assuming the surviving spouse

40 Ivo Lapenna: Main Features of the Yugoslav Constitution 1946–1971, *International and Comparative Law Quarterly*, 2/1972, p. 215.
41 Nikola Srzentić: Notes on the Law on Inheritance, *New Yugoslav Law*, 4/1955, p. 19.
42 Srzentić (1955): p. 20.
43 Association of Jurists of the Federative People's Republic of Yugoslavia, Law on Inheritance, *New Yugoslav Law*, 6/1955, p. 23
44 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 23.
45 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 24.
46 Before the inflation in 1990s, 56,4 dinars were equal as 1 US dollar. See http://singidunum-online.com/metalni-novac-jugoslavija-kraljevina-jugoslavija-c-1_9_33.html (accessed on 14.10.2023).

possessed property of their own—the distribution would be as follows: 10,000 dinars would be allocated to the spouse while each child would receive 20.000 dinars.[47]

Similarly, the spouse was placed within the secondary hereditary order alongside the parents of the deceased. However, the parents were entitled to inherit only in cases where the deceased left no direct descendants, as prescribed by law. Should the parents themselves have predeceased the *de cuius*, their share would pass to their children—the deceased's siblings—and, in turn, to their descendants by right of representation. The division of the estate followed an equitable principle: one half was allotted to the surviving spouse, while the other half was distributed to the parents and/or their descendants. In instances where neither parent survived the deceased and they had left no descendants, the entire estate devolved upon the surviving spouse. The third and fourth hereditary orders included the deceased's grandparents and great-grandparents, likewise inheriting by right of representation. However, the surviving spouse was not included within these two classes.

Beyond the general framework governing statutory inheritance, the law also contained distinct provisions addressing the special legal status of certain heirs, most notably that of the surviving spouse.

As previously mentioned, the general principles of inheritance prescribe an equal division of the estate between the surviving spouse and the parents of the deceased in the absence of direct descendants. However, a particular provision allows for judicial discretion in cases where the spouse lacks essential means of sustenance. In such circumstances, the court may award the spouse a larger portion of the estate. Similarly, should the estate be of modest value and its division would risk imposing undue hardship upon the spouse, the court might decree the entire estate to be granted to the spouse. Conversely, under comparable conditions, if the parents of the deceased are themselves without essential means of support, the court may rule that one or both parents shall receive either a larger share or even the entirety of the estate, thereby leaving nothing to the surviving spouse. In reaching such decisions, the court is required to take into account various factors, including the financial resources and earning capabilities of both the spouse and the parents, as well as the estate's overall value. Another special provision seeks to favour, as statutory heirs, those descendants who actively contributed to the deceased's wealth. Descendants who assisted in enhancing the deceased's estate—whether through labour, wages, or other means—may claim a portion of the estate corresponding to their contribution.

Additionally, the law includes a special provision safeguarding the rights of the surviving spouse and the deceased's cohabiting descendants to retain household items essential for daily life, including furnishings and bedding.

Moreover, the principle of necessary heirship is upheld, limiting testamentary freedom in cases where specific relatives survive the deceased.

This institution, designed to strengthen familial cohesion, imposes restrictions on the right of testamentary disposition, ensuring that where specific relatives survive the deceased, a portion of the estate must necessarily be reserved for them.[48] In

47 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 24.
48 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 27.

defining the scope of necessary heirs, the Act distinguishes between two categories. The first includes the direct descendants of the deceased, adoptees and their progeny, parents, and spouse, all of whom qualify as necessary heirs provided they are entitled to inherit under the law.[49] To be recognised as necessary heirs, these persons have to comply with three mandatory conditions. Firstly, they must be eligible to inherit according to the statutory order of succession. Secondly, they must suffer from a lasting incapacity for work. Thirdly, they must lack the means necessary for subsistence. If these conditions are met, such persons could not be eliminated from inheritance through a testamentary disposition.[50] Finally, in relation to the size of the statutory minimum share, the law distinguishes between two groups of necessary heirs. The first group comprises the deceased's descendants, adoptees, and spouse, while the second includes all other necessary heirs.[51] The statutory minimum for heirs within the first group amounts to one-half of the portion that would have fallen to them under intestate succession, whereas for those in the second group, it equals one-third thereof.[52] In determining this statutory minimum share, all gifts bestowed by the deceased upon necessary heirs during his lifetime, as well as the gifts the deceased made to other persons in the final year of his life, shall be taken into account.[53] Where it is established that the statutory share has been violated, testamentary dispositions shall first be curtailed to rectify the imbalance. However, the deceased retains the right to disinherit certain necessary heirs, provided that lawful grounds for such exclusion exist.[54]

When it comes to succession case law during this period, only a limited number of judgments were published. The available rulings predominantly concern matters such as agrarian division of property—an issue characteristic of socialist governance—and inheritance on the basis of law.[55] Few cases specifically address the position of the

49 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 27.
50 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 27.
51 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 27.
52 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 27.
53 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 27. In cases of statutory share infringement, priority is given to restraining testamentary dispositions. If the statutory share remains unfulfilled, gifts will be subject to reversal. The reversal process begins with the most recent gift and proceeds in reverse order of their issuance. The right to initiate actions for restraining testamentary dispositions and reclaiming gifts is subject to a three-year statute of limitations.
54 Association of Jurists of the Federative People's Republic of Yugoslavia (1955): p. 27. "*In the cases provided by the Law, the testator may disinherit the necessary heirs. Such cases are: a) where the heir committed a major offence toward the devisor by violating some legal or moral obligation; b) where the heir committed some major criminal offence toward the devisor, his spouse, child or parent; c) where the heir committed a criminal offence aimed at undermining the people's authority, the independence of the country, its defence capacity or socialist construction; and d) where the heir took to idling and a dishonest life.*"
55 In the People's Republic of Yugoslavia, it was prohibited for anyone to possess an excess of agricultural land beyond the legally permitted limit. This restriction also applied to citizens inheriting land, preventing them from acquiring more than the prescribed maximum. In the event that an heir received agricultural land through inheritance that, combined with their

surviving spouse, and those available for analysis through alternative sources suggest that judicial practice remained largely aligned with codified legal provisions. It may thus be concluded that the status of women as surviving spouses was, for the most part, duly recognised and upheld.[56]

The constitution amendments of 1971 and 1974 transferred jurisdiction over civil law matters to the republics, thereby granting them the authority to enact their own civil law legislation. Montenegro introduced the Inheritance Act in 1975. However, with regard to the hereditary position of the surviving spouse, this Act largely mirrored its predecessor. Moreover, this Act was promulgated at a time when private property had been relegated to the margins of economic and legal life. Although the Act sought to secure the full and unlimited freedom of private property, its provisions proved largely ineffective, given the socio-political climate imposed by the socialist constitution of 1974, which upheld a fundamentally different ideology regarding property and social life.[57] We shall now turn to the period following the decline of Soviet-type dictatorship in Yugoslavia when "*things started to reverse*."

IV. THE INHERITANCE ACT OF 2008: HAVE THINGS REALLY CHANGED?

The Inheritance Act of 2008 sought to modernise succession law in Montenegro; however, in our view, it failed to achieve this objective. While it did clarify the position of the surviving spouse within both the first and second hereditary orders—whereby, in the absence of offspring, the spouse is moved to the second order, meaning they do not automatically belong to the first *a priori*, but must competing within it—the Act left it to the courts to decide whether there were grounds to reduce the surviving spouse's share of the inheritance.[58] Conversely, the Act also allows the surviving spouse to inherit a larger portion of their statutory entitlement should they be found to lack sufficient means of subsistence. In such cases, they may be granted lifelong "*usus-fructus*"

existing holdings, surpassed the lawful limit, they had the right to select specific plots they wished to retain. However, any surplus exceeding the established maximum would revert to the collective ownership of the people. The heir was eligible for compensation, following prevailing regulations, for the surplus land relinquished.

56 Miloš Stevanov: Judicial Practice in Application of Law of Succession, *Zbornik Pravnog fakulteta*, 1/1966, p. 43.

57 Dejan Đurđević: Aktuelna reforma naslednog prava u Crnoj Gori, *Anali Pravnog fakulteta*, 1/2009, p. 265. For example, Art. 194 par. 3 of the 1974 Constitution provided that no individual could inherit and possess a greater number of real estate or means of labour than specified by the particular law. This provision was manifestly contrary to the "liberal" rules from the 1975 Inheritance Act, which means that by the *lex superior derogat legi priori* interpretation, it may be inferred that the provision enabling the heirs to acquire property freely would be deemed invalid.

58 Art. 13 par. 1 in conjunction with the Art. 23 of the Inheritance Act from 2008. Art. 13 par. 1 reads as follows: "*[t]he estate of the deceased who left no descendants is inherited by his spouse and his parents*."

rights over the entirety or a portion of the deceased's estate.[59] Furthermore, the Act introduced the concept of the "*contract of renunciation of inheritance that has not been opened*" which provides a mechanism for a spouse to relinquish their part in favour of the other heirs in exceptional cases. According to Article 135, paragraph 1, such a contract is permissible when concluded between a descendant and an ancestor, whereby the descendant renounces their prospective inheritance that would have accrued to them after the ancestor's death based on the rules of legal inheritance.[60] The Montenegrin legislator foresees that, for this contract to be valid, it is necessary that it be drawn up in writing and certified by a notary. Moreover, under Article 136, the declaration of renunciation of inheritance is irrevocable. If not expressly stated otherwise, this renunciation also extends to the descendants of the person waiving their inheritance (Article 138).[61] In practice, this may lead to the violation of the principle of equality enshrined in the Constitution. Research has shown that women continue to feel obliged to renounce their share of the inheritance in favour of male descendants due to entrenched traditional expectations.[62] Furthermore, certain analyses indicate that a significant number of women remain unaware of their fundamental inheritance and divorce rights, often opting to waive their inheritance share rather than assert their rights.[63] It should be emphasized that Article 58 of the Montenegrin Constitution guarantees property rights, stating: "*[p]roperty rights shall be guaranteed. No one shall be deprived of or restricted in property rights, unless required by the public interest*."[64] Moreover, by Article 27, paragraphs 1 and 2, of Inheritance Act of 2008, the deceased's children, adopted children and their descendants, surviving spouse, and parents are considered absolute heirs, whereas siblings and grandparents of the testator are classified

59 Art. 24 par. 1 reads as follows: "*[w]hen a spouse who does not have necessary means of living is invited to inherit with other heirs, the court may, at the request of the spouse, decide that the spouse is entitled to lifelong enjoyment over the entirety or a portion of the deceased's estate*."

60 Art. 135 par. 1 reads as follows: "*[e]xceptionally, a descendant who can dispose of his rights independently can waive the inheritance that would have accrued to him after the death of the ancestor by contract with the ancestor*."

61 It should be stressed that Art. 133 provides that the heir who disposed of the property that represents the deceased's estate cannot renounce his/her part. However, the significance of this provision in the spousal context is negligible because the spouse is not entitled to dispose of the joint property of her own, which means that the deceased can bequeath only his own property.

62 See Predrag Tomović: Nestaje običaj muškog nasljeđivanja u Crnoj Gori, *Radio Slobodna Evropa*, 3 April 2019. Available at: https://www.slobodnaevropa.org/a/pravo-na-imovinu-rod-%C5%BEene-dom/29859105.html (accessed on 14.10.2023); Mirjana Dragaš: Zašto se žene odriču nasljedstva: "Neću stavljati nož među braću", *Antena M*, 21 March 2019. Available at: https://www.antenam.net/drustvo/114083-zasto-se-zene-odricu-nasljedstva-necu-stavljati-noz-medju-bracu (accessed on 14.10.2023).

63 Sigurna Kuća Report (2019): *Attitudes towards property rights of women in Montenegro*, pp. 36–60. Available at: http://szk.co.me/publikacije/ (accessed on 14.10.2023).

64 Constitution of Montenegro, available at: https://www.paragraf.me/propisi-crnegore/ustav-crne-gore.html (accessed on 16.09.2023).

as relative necessary heirs.[65] Additionally, Article 11 of the Montenegrin Family Law states that "*[p]roperty relationships in the family are based on the principles of equality, reciprocity, and solidarity, as well as on the protection of the interests of children*."[66] Despite these legal safeguards, the practical enforcement of such provisions remains inadequate, as deeply ingrained societal norms continue to favour male heirs. These longstanding, male-centred social structures—rooted in historical tradition—will be further addressed in the following subsection.[67]

Reports and initiatives undertaken by both international and local organisations rely on studies conducted by demographers, statisticians, and economists, offering valuable insights into the prevailing situation.[68] These studies present quantitative data on the skewed sex ratio at birth and discuss the demographic and socioeconomic underpinnings of the so-called "son preference" in Montenegro with regard to succession law. According to these findings, women continue to be primarily expected to raise children, manage household responsibilities, and, above all, give birth to a son.[69] Despite Montenegro's ostensibly progressive trajectory during the socialist period, patriarchal structures governing male-female relationships remained deeply entrenched, as did the disparity in societal attitudes towards male and female children.[70] In 2011, Doris Stump drew international attention to the issue of sex selection and gender imbalances in Europe, sparking political concern within both the Council of Europe and the European Union. She identified Montenegro among the countries where prenatal sex selection was taking place.[71] In 2014, Nils Muižnieks echoed worries about gender imbalances, citing a UNFPA report that documented an unnaturally high proportion of male births in several countries, including Montenegro.[72] In 2017, Montenegro's Women's Rights Center, in collaboration with McCann, launched the social campaign "*Neželjena*" (unwanted), addressing the deeply ingrained perception that daughters are less desirable. This campaign not only raised awareness of

65 Inheritance Act (2008), available at: https://www.paragraf.me/propisi-crnegore/zakon-o-nasljedjivanju.html (accessed on 16.09.2023). Being absolute heirs according to law means that those heirs cannot be deprived of their compulsory share irrespective of their financial status, while relative heirs are grandparents and brothers and sisters under the condition that they don't have sufficient means for life.

66 Family Act (2007), available at: https://www.paragraf.me/propisi-crnegore/porodicni-zakon.html (accessed on 16.09.2023).

67 It is also important to note that Article 18 of Montenegro's Constitution guarantees gender equality.

68 See Zenovich (2016): pp. 26–48, 38.

69 Diana Kiščenko: An ethnographic exploration of son preference and inheritance practices of Montenegro, *Comparative Southeast European Studies*, 1/2021, p. 75.

70 See Mirjana Morokvasić (1983): *Institutionalised equality and women's condition in Yugoslavia*, Emerald Publishing Limited, Bingley, pp. 9–17.

71 Doris Stump (2011): *Prenatal Sex Selection, Report, Council of Europe, Parliamentary Assembly*. Available at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp? (accessed on 14.10.2023).

72 Nils Muižnieks (2014): *Sex-Selective Abortions Are Discriminatory and Should Be Banned. Human Rights Comment*. Available at: https://www.coe.int/en/web/commissioner/-/sex-selectiveabortions-are-discriminatory-and-should-be-bann-1. (accessed on 14.10.2023).

gender discrimination but also advocated against the misuse of prenatal testing in Montenegro.[73] Some argue that the discriminatory position of the spouse in Montenegro is solely a consequence of women's broader disempowerment. This, however, is a highly contested claim. While it is true that private property—as both a legal institution and a discourse—acts as a mechanism that reinforces gender roles in Montenegro by positioning women symbolically as objects or possessions, the voluntary relinquishment of property by women in favour of male heirs is a discursive act that further entrenches male dominance, often under the guise of serving the "public interest."[74] The aforementioned analyses highlight both the symbolic and tangible dimensions of discrimination against women in Montenegro, rooted in the *zadruga* worldview. In a society where daughters are expected to marry and become dependent on their husbands and in-laws, any deviations from traditional norms governing housing, family planning, and inheritance do not provide women with greater security but instead place them at an even greater disadvantage. Married women, being economically reliant on their husbands and in-laws, frequently face housing insecurity in the event of divorce.[75] Moreover, when the law itself establishes conditions for gender inequality—irrespective of the wording of a given provision—the situation is all the more dire. The previously discussed institution of the contract of renunciation of inheritance that has not been opened is a prime example of how legal frameworks can facilitate abuse. This provision allows an heir—particularly a spouse—to renounce their own inheritance share in advance. While statistical data explicitly linking this legal mechanism to an increase in female spouses renouncing their inheritance shares is lacking, the concerns remain both legitimate and pressing. Considering the irrevocable nature of such renunciations, the extent to which this contract will be employed in practice remains to be seen. Beyond this specific contract, heirs, including the spouse, retain the option to forgo their inheritance share during inheritance proceedings conducted before a notary.[76] As indicated by previous analyses, this practice is widely utilised.[77]

73 See *Otkrivena ploča neželjenim djevojčicama* (2017). Available at: https://womensrightscenter.org/otkrivena-ploc%C2%8Da-djevojc%C2%8Dicama-koje-nijesu-dobilepriliku-da-budu-rodene/. (accessed on 14.10.2023).

74 Zenovich (2016): p. 29.

75 See Ivana Petričević (2012): *Women's Rights in the Western Balkans in the Context of EU Integration: Institutional Mechanisms for Gender Equality*. Available at: https://ravnopravnost.gov.hr/UserDocsImages/arhiva/images/pdf/Izvješće_Womens%20Rights%20in%20the%20Western%20Balkans%20in%20the%20Context%20of%20EU%20Integration.pdf (accessed on 14.10.2023).

76 Art. 131 of the Inheritance Act from 2008.

77 According to statistics from 2017, only 4% of women in Montenegro owned a house, 8% owned land, 14% owned weekend houses and 23% owned a flat. See Montenegrin Employers Federation, E3 Consulting LLC (2017): *Women in Management in Montenegro*, Montenegrin Employers Federation, Podgorica, p. 9. Available at: http://poslodavci.org/en/publications/women-in-management-in-montenegro (accessed on 14.10.2023).

V. CONCLUSION

The inheritance rights of the surviving spouse in Montenegro have undergone various stages of development. While legal provisions have evolved over time, Montenegrins have remained steadfast in preserving their traditional views on gender dynamics within inheritance matters. Although lawmakers in Montenegro have sought to align spousal inheritance provisions with more progressive and egalitarian standards, their efforts have yet to yield comprehensive recognition or practical enforcement. The deeply ingrained perception of women primarily as "child bearers", especially of a male offspring, has persisted, without ensuring an environment in which they can exercise their rights on equal footing with men. As a result, despite succession laws theoretically providing for equal inheritance rights, patriarchal attitudes have resurfaced, reinforcing long-standing social hierarchies.

There are two possible approaches to resolve this situation. The first involves enacting targeted reforms in Montenegro's succession laws to eliminate lingering legal provisions that enable systemic misuse. Chief among these is the abolition of the contract of renunciation of inheritance that has not been opened, which remains a vehicle for reinforcing gender disparities. Additionally, it requires a collaborative effort between lawyers and sociologists to comprehensively address social relationship issues, analyse and compare them, and assess their relative importance. Through rigorous analysis and comparative assessment, policymakers could identify solutions that not only address the specific needs of the population but also foster genuine progress in the inheritance rights of surviving spouses and succession laws as a whole. The alternative option is to allow social change to take its natural course. The complexity of the Montenegrin situation, deeply rooted in historical traditions, presents a significant challenge to immediate reform. As discussed in this article, Montenegro's ongoing efforts to achieve peace within its territory and assert an undisputed, unique identity have contributed to the preservation of its cultural heritage, which serves as a direct connection to its foundational values. However, a careful and patient approach to these matters may gradually lead to a shift in societal attitudes, ultimately fostering meaningful gender equality in Montenegro's inheritance system.