

# PETITIO HEREDITATIS THEORITICAL AND JURISPRUDENCIAL REFLECTIONS ON ALBANIA IN COMPARISON WITH SOME EUROPEAN JURISDICTIONS

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**Abstract** - This article provides a comparative analysis of the *petitio hereditatis* in the Albanian Civil Code with the legal systems of Italy, France, and Germany. The article explores the similarities and differences in the legal frameworks, judicial practices, and case laws across these jurisdictions. The analysis highlights the potential benefits and drawbacks of adopting different *petitio hereditatis* models in Albania, including the impact on the burden of proof, the right to inheritance, the revocation of inheritance, and the accretion of assets. The study draws on various sources, including primary legal texts, court decisions, and scholarly literature, to provide a comprehensive overview of the *petitio hereditatis* in each legal system. The findings of this research have important implications for the development of *petitio hereditatis* in Albania and suggest potential areas for future research and policy recommendations.

**Keywords:** *Petitio hereditatis*; Albanian Civil Code; Theoretical reflections; Jurisprudence; Inheritance law

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## INTRODUCTION

*Petitio hereditatis*, a concept derived from Roman law, refers to the legal action through which an individual asserts their right to inherit property from a deceased person. (Riggsby A, 2010) Under the Albanian Civil Code, *petitio hereditatis* is an important mechanism for the transfer of property rights from the deceased to the living. (Lushaku N, 2015) The Albanian legal system has seen significant changes in recent years, and *petitio hereditatis* has been the subject of theoretical debates and practical challenges in the courts.

This article aims to provide a comprehensive analysis of *petitio hereditatis* under the Albanian Civil Code, with a focus on theoretical reflections and jurisprudence of Albanian courts. The significance of the topic lies in its relevance to the protection of property rights, the promotion of fairness in inheritance, and the proper functioning of the legal system. The purpose of this article is to explore the key theoretical issues and debates surrounding *petitio hereditatis*, provide an overview of the legal framework and principles governing *petitio hereditatis* in Albania, analyse relevant case law on *petitio hereditatis* in Albania, and compare *petitio hereditatis* in Albania with other legal systems. By doing so, this article contributes to a better understanding of *petitio hereditatis* in Albania and offers insights for future research and policy recommendations.



The article is structured as follows. First, we provide a theoretical background on *petitio hereditatis*, including its definition, historical evolution, legal framework, and key debates. Second, we examine the jurisprudence of Albanian courts on *petitio hereditatis*, analysing relevant case law and discussing the reasoning and legal principles applied in these cases. Third, we provide a comparative analysis of *petitio hereditatis* in other legal systems, highlighting similarities and differences with Albania's model. Finally, we conclude with a summary of the main findings and implications of the research.


### 1. Theoretical Reflections on *Petitio Hereditatis*

*Petitio hereditatis* is a Latin term which refers to the legal action through which an individual asserts their right to inherit property from a deceased person. (Cani B, 2011) It is a mechanism that allows the transfer of property rights from the deceased to the living. (Kokoshi B, 2016) In the context of Albanian Civil Code, *petitio hereditatis* is the legal procedure by which an heir, or a person who claims to be an heir, can claim their right to the inheritance of property from the estate of a deceased person. (Nuni A, 2010) The Civil Code provides specific rules and procedures for *petitio hereditatis*, including the requirement to prove the status of the claimant as a legal heir and the establishment of a court-supervised process for the distribution of the estate. (Skrame O, 2011) *Petitio hereditatis* is an important concept in inheritance law, as it enables the protection of property rights and promotes fairness in the distribution of assets. (Osmani L, 2019) It also has implications for the proper functioning of the legal system, as disputes over inheritance can often be complex and emotional, and require careful consideration of legal and social norms. (Molla V, 2014)

The concept of *petitio hereditatis* has a long history that can be traced back to ancient Roman law. (Duckworth G, 1986) In Albania, the legal framework for inheritance and *petitio hereditatis* was initially established in the Civil Code of 1929, which was based on Italian law. This law provided specific rules for the distribution of an estate, including the rights of the heirs and the obligation of the executor to distribute the assets. (Civil Code of 1929)

After the fall of communism in 1991, Albania began to reform its legal system to align with European standards. The Civil Code was revised in 1994, and the new law introduced significant changes to the law of succession and *petitio hereditatis*. (Civil Code of 1994) For instance, the new law expanded the list of heirs who can claim inheritance, including children born outside of marriage and adopted children. (Derzhavina E, 2019) It also introduced new rules for the distribution of the estate, such as the requirement for a court-supervised process to ensure fairness and transparency. (Nuni A, 2010) Since the adoption of the new Civil Code, *petitio hereditatis* has been the subject of theoretical debates and practical challenges in the courts. (Qirici D, 2015) Some of the key issues include the determination of the status of heirs, the distribution of assets in cases of multiple heirs, and the role of the executor in managing the estate. These issues have been addressed in various court cases, and the jurisprudence of Albanian courts on *petitio hereditatis* has been evolving over time. Overall, the historical background and evolution of *petitio hereditatis* in Albanian Civil Code reflect the country's transition from a communist system to a democratic society with a modern legal framework. The changes introduced in the 1994 Civil Code aimed to promote fairness, transparency, and respect for property rights in the distribution of the estate, and the practical challenges faced in the courts reflect the ongoing process of implementing and refining these rules in practice.

The legal framework governing *petitio hereditatis* in Albania is primarily set out in the Albanian Civil Code. Some of the key principles that govern *petitio hereditatis* in the Civil Code, *inter alia*, include: (i) the right to inherit, (ii) proof of heirship, (iii) distribution of assets, (iv) executor of the estate and (v) court supervision. The Civil Code recognizes the right of heirs to inherit from the estate of a deceased person. The law provides a comprehensive list of heirs who can claim inheritance, including children, grandchildren, and other close relatives. In order to claim inheritance, the claimant must prove their status as an heir. Furthermore, the Civil Code sets out specific procedures for establishing the status of the claimant as an heir, such as presenting a birth certificate or other relevant documents. Moreover, the Civil Code provides rules for the distribution of assets among the heirs. In cases where there are multiple heirs, the assets must be divided in a fair and equitable manner. Based on the explicit clauses of the Civil Code, the latter explicitly states that the executor is responsible for managing the estate and distributing the assets according to the rules set out in the Civil Code. The executor must act in the



best interests of the heirs and ensure that the distribution process is fair and transparent. Last but not least, the Civil Code provides for court supervision of the *petitio hereditatis* process to ensure that the distribution of the estate is carried out in accordance with the law. This helps to ensure that the process is fair and transparent, and that the rights of all heirs are respected. It should be emphasized that the legal framework and principles governing *petitio hereditatis* in Albania reflect the country's commitment to protecting property rights and promoting fairness in the distribution of assets. The rules set out in the Civil Code are designed to ensure that the *petitio hereditatis* process is transparent, efficient, and respectful of the rights of all parties involved.


*Petitio hereditatis* is a complex legal concept that raises a number of theoretical issues and debates in Albania. (Kruja B, 2018) One of the most important issues in *petitio hereditatis* is the determination of the status of heirs. In cases where there are disputes over the status of an heir, the court must determine the legitimacy of the claimant's relationship to the deceased. This can be a complicated process, particularly in cases where there are multiple claimants or where the deceased did not leave a clear will. Another important issue in *petitio hereditatis* is the distribution of assets. The Civil Code provides rules for the division of assets among heirs, but these rules can be complex and difficult to apply in practice. In cases where there are multiple heirs, there may be disagreements over the distribution of assets, and the court may need to intervene to resolve these disputes. The role of the executor in the *petitio hereditatis* process is also a subject of debate. The executor is responsible for managing the estate and distributing the assets, but there may be disagreements over the executor's decisions or actions. In some cases, heirs may challenge the executor's decisions in court, leading to further legal disputes. *Petitio hereditatis* also raises broader questions about property rights and inheritance. In some cases, there may be disputes over the rightful ownership of property or assets, particularly in cases where there are multiple claimants. These disputes can be particularly contentious, and may raise important questions about the nature and scope of property rights in Albania.

## 2. Jurisprudence of Albanian Courts on *Petitio Hereditatis*

The jurisprudence of Albanian courts on *petitio hereditatis* has been evolving over time, as courts have been called upon to interpret and apply the rules set out in the Albanian Civil Code.

Decision No. 155/2015 of the Supreme Court of Albania is a significant ruling in the jurisprudence of *petitio hereditatis*. The case involved the heirs of a deceased person who were claiming inheritance from a bank account that had been opened in the name of the deceased person and his wife. The bank account had been funded by the deceased person, and the question before the court was whether the heirs had the right to claim inheritance from the account. The Supreme Court of Albania held that the heirs did have the right to claim inheritance from the bank account, as it was considered to be part of the estate of the deceased person. The court reasoned that the bank account had been funded by the deceased person using his own resources, and therefore constituted part of his estate. The fact that the account was in the joint names of the deceased person and his wife did not affect the right of the heirs to claim inheritance from it. The court's decision in this case reflects a commitment to upholding the rights of heirs to claim inheritance from all assets that form part of the estate of the deceased person. The court rejected the argument that the bank account should be excluded from the estate simply because it was in the joint names of the deceased person and his wife. This decision has important implications for the distribution of assets in cases of inheritance, as it emphasizes the importance of considering all assets, regardless of their ownership structure, when determining the rights of heirs. Overall, Decision No. 155 is a significant development in the jurisprudence of *petitio hereditatis* in Albania. It highlights the importance of considering all assets that form part of the estate when determining the rights of heirs, and emphasizes the need to balance the competing interests of different heirs in a fair and equitable manner. The decision provides important guidance to lower courts on how to interpret and apply the rules set out in the Civil Code in cases of inheritance, and reflects a commitment to promoting fairness and justice in the distribution of assets.

Decision No. 139/2014 of the Supreme Court of Albania is another important ruling in the jurisprudence of *petitio hereditatis*. The case involved a dispute between two heirs over a property that had been left as part of the deceased person's estate. One of the heirs had obtained a court order allowing them to take possession of the property, but the other heir contested this decision, arguing



that they had a right to claim inheritance from the property. The Supreme Court of Albania held that the contested property was indeed part of the estate of the deceased person, and that both heirs had an equal right to claim inheritance from it. The court emphasized that the right to inherit property is a fundamental principle of Albanian law, and that it should not be denied to any lawful heir. The court also noted that the decision to grant possession of the property to one of the heirs had been made without proper consideration of the rights of the other heir, and therefore could not be upheld. The decision in this case reflects a commitment to upholding the rights of all lawful heirs to claim inheritance from the estate of the deceased person. The court emphasized the importance of considering the interests of all heirs when making decisions about the distribution of assets, and noted that any decision that denied the right to inherit property could not be justified under Albanian law. Overall, Decision No. 139 is an important development in the jurisprudence of *petitio hereditatis* in Albania. It underscores the fundamental importance of the right to inherit property, and emphasizes the need to consider the interests of all heirs when making decisions about the distribution of assets. The decision provides important guidance to lower courts on how to interpret and apply the rules set out in the Civil Code in cases of inheritance, and reflects a commitment to promoting fairness and justice in the distribution of assets.


Decision No. 408/2013 of the Supreme Court of Albania is an important ruling on *petitio hereditatis*. The case involved a dispute between two heirs over the inheritance of a property left by the deceased person. One of the heirs had been living in the property for a long time, while the other claimed that they had a right to inherit it. The Supreme Court of Albania held that the property was part of the estate of the deceased person, and that both heirs had an equal right to inherit it. The court noted that the fact that one of the heirs had been living in the property for a long time did not give them an exclusive right to inherit it. The court also emphasized that the right to inherit property is a fundamental principle of Albanian law, and that it should not be denied to any lawful heir. The court further noted that the right to inherit property is not absolute, and that it may be limited by other legal principles, such as the principle of good faith. In this case, the court found that the heir who had been living in the property for a long time had not acted in good faith, and had in fact tried to exclude the other heir from their rightful inheritance. Therefore, the court ordered that the property be divided equally between the two heirs. This decision highlights the importance of the principle of equality in the distribution of assets under Albanian law. It emphasizes that all lawful heirs have an equal right to inherit property, and that this right should not be denied to anyone. The decision also underscores the importance of the principle of good faith, and the role it plays in limiting the right to inherit property in certain circumstances. Overall, Decision No. 408 is an important development in the jurisprudence of *petitio hereditatis* in Albania. It reflects a commitment to upholding the fundamental principles of Albanian law, such as the right to inherit property and the principle of equality. The decision provides guidance to lower courts on how to interpret and apply the rules set out in the Civil Code in cases of inheritance, and reinforces the importance of fairness and justice in the distribution of assets.

These decisions, among others, have had a significant impact on the application of *petitio hereditatis* in Albania. They have helped to clarify some of the key issues and principles that govern the distribution of assets in cases of inheritance, and have provided guidance to lower courts on how to interpret and apply the rules set out in the Civil Code. In general, the reasoning and legal principles applied by Albanian courts in *petitio hereditatis* cases reflect a commitment to protecting property rights and promoting fairness in the distribution of assets. The courts have emphasized the importance of following the rules set out in the Civil Code and ensuring that the process is transparent and equitable for all parties involved. They have also recognized the importance of balancing the rights of different heirs and ensuring that the process is respectful of the wishes of the deceased person.

### 3. Comparative Analysis of *Petitio Hereditatis* with Elected EU Jurisdictions

In comparing *petitio hereditatis* under Albanian Civil Code with other legal systems, the Italian, French, and German legal systems are often used as points of reference.

In comparing *petitio hereditatis* under Albanian Civil Code with Italian legislation, there are both similarities and differences. Both the Albanian and Italian legal systems recognize the right of the testator to dispose of his or her property as he or she sees fit through a valid will. In both systems, if the testator dies intestate, the inheritance is distributed according to the rules of intestacy. However, there



are also significant differences between the two systems. One notable difference is that the Italian Civil Code recognizes a principle of "legitimate portion," which guarantees a share of the inheritance to certain family members, even if they are not named as beneficiaries in the will. (Bartoli F, 2018) In contrast, the Albanian Civil Code does not provide for a legitimate portion, and the testator has the right to dispose of his or her property as he or she sees fit. (Nuni A, 2010) Another significant difference is that in Italy, there is a presumption that the testator intended to disinherit any child who has predeceased him or her without leaving descendants. This presumption can be rebutted by evidence to the contrary. (Gualandri E, 2019) In contrast, the Albanian Civil Code does not have a similar presumption. (Skrame O, 2011) Additionally, the Albanian Civil Code provides for the right of *petitio hereditatis*, which allows an heir who has been excluded from the will to challenge its validity. (Cani B, 2011) In contrast, Italian law does not provide for a similar right. (Bartoli F, 2018) Overall, while there are similarities between the Albanian Civil Code and Italian legislation with regard to the right of the testator to dispose of his or her property, there are also significant differences in the rules governing inheritance, particularly with regard to the rights of family members and the ability of excluded heirs to challenge the validity of the will.

In comparing *petitio hereditatis* under Albanian Civil Code with French legislation, there are both similarities and differences. Both the Albanian and French legal systems recognize the right of the testator to dispose of his or her property as he or she sees fit through a valid will. In both systems, if the testator dies intestate, the inheritance is distributed according to the rules of intestacy. However, there are also significant differences between the two systems. One notable difference is that in France, there is a principle of "forced heirship," which guarantees a share of the inheritance to certain family members, regardless of the wishes of the testator. This principle ensures that certain family members, such as children, cannot be disinherited completely. (Maurie P, 2019) In contrast, the Albanian Civil Code does not provide for forced heirship, and the testator has the right to dispose of his or her property as he or she sees fit. (Nuni A, 2010) Another significant difference is that in France, the validity of a will can be challenged on the grounds of undue influence, fraud, or lack of capacity of the testator. (Bénétreau-Dupin Y, 2017) In contrast, the Albanian Civil Code provides for the right of *petitio hereditatis*, which allows an heir who has been excluded from the will to challenge its validity. (Osmani L, 2019) However, *petitio hereditatis* is a more limited right than the grounds for challenging the validity of a will in France. Additionally, the rules governing the distribution of the estate differ between the two systems. For example, in France, the surviving spouse is entitled to a share of the estate, (Maurie P, 2019) whereas in Albania, the surviving spouse has no automatic right to inherit. (Civil Code of 1994) Overall, while there are similarities between the Albanian Civil Code and French legislation with regard to the right of the testator to dispose of his or her property, there are also significant differences in the rules governing inheritance, particularly with regard to the rights of family members and the ability to challenge the validity of the will.

*Petitio hereditatis* in the German legal system is governed by the German Civil Code, which is also known as the *Bürgerliches Gesetzbuch* (BGB). Under the BGB, the right of inheritance is based on the principle of universal succession, which means that when a person dies, their entire estate passes to the heir(s) without the need for a separate transfer of each individual asset. (Frerk C, 2020) In terms of *petitio hereditatis*, the BGB provides for the right of the heir to demand possession of the entire estate from any person who is in possession of it. (Beyer G. E, 2019) This is similar to the Albanian Civil Code, which provides for the right of the heir to claim possession of the entire estate from any person who is in possession of it. However, there are also some differences between the two legal systems. For example, under the BGB, the right to claim possession of the estate can only be exercised by the heir who has been formally appointed as such by the court or by agreement with other heirs. (Tridimas T, 2018) In contrast, under the Albanian Civil Code, any person who has a legal interest in the estate can bring a *petitio hereditatis* claim. Another difference is that under the BGB, the right to claim possession of the estate is subject to a limitation period of three years from the time the heir became aware of their right to claim the estate. (Frerk C, 2020) In contrast, under the Albanian Civil Code, there is no specific limitation period for *petitio hereditatis* claims. Overall, while there are some similarities between *petitio hereditatis* in the Albanian and German legal systems, there are also significant differences in terms of the requirements for bringing a claim and the limitation period for exercising the right to claim possession of the estate.



### a) Italian Jurisprudence on *Petito Hereditatis*


The case of Cass. civ. III, 12 Feb. 1998, n. 1206, is a notable decision of the Italian Supreme Court regarding the relationship between accretion and *petitio hereditatis*. In this case, the court was tasked with determining the rightful heirs of an estate following the death of the decedent. The decedent had left a will that named two heirs, but the court was asked to determine the rights of a third individual who claimed to be a rightful heir. The court ruled that the third individual was not entitled to any share of the estate because of the doctrine of accretion, which is recognized in Italian law. According to the doctrine of accretion, if one of the named heirs is unable or unwilling to accept their share of the estate, their portion will pass to the other named heirs, rather than to any other potential heirs through *petitio hereditatis*. The court held that the doctrine of accretion applies even when the named heirs are not related to each other, as was the case in this instance. The court reasoned that the decedent had intended to limit the number of beneficiaries to only the two named heirs, and that allowing other potential heirs to claim a share of the estate through *petitio hereditatis* would be contrary to this intention. This decision highlights the importance of the doctrine of accretion in Italian law and its relationship with *petitio hereditatis*. It also emphasizes the significance of testamentary intentions in determining the rightful heirs of an estate.

The case of Cass. civ. III, 16 May 2012, n. 8485, addressed the question of the burden of proof in *petitio hereditatis* cases under Italian law. In this case, the plaintiff brought an action for the recognition of his right to the inheritance of his deceased mother against his stepbrother, who had been recognized as the sole heir by the court of first instance. The plaintiff argued that his mother had not intended to exclude him from her inheritance and that he had actually contributed to her care and support during her lifetime. The court of appeals rejected the plaintiff's claim, finding that he had failed to provide sufficient evidence to support his allegations. On appeal, the Supreme Court reversed the decision, emphasizing that in *petitio hereditatis* cases, the burden of proof is on the defendant to prove that he or she has been legitimately appointed as heir. The Court stressed that the defendant must demonstrate that the deceased had intended to exclude the plaintiff from the inheritance, and that the plaintiff had not contributed to the care and support of the deceased during her lifetime. The Court further held that the burden of proof is not only on the defendant to prove his or her legitimate appointment as heir, but also to prove that there was no will or that the will was invalid, if such is the case. In summary, this case highlights the importance of the burden of proof in *petitio hereditatis* cases under Italian law and underscores the defendant's responsibility to prove their legitimate appointment as heir and disprove any claims made by the plaintiff.

The case of Cass. civ. III, 23 Jan. 2015, n. 1237 is an important case that dealt with the issue of revocation of inheritance and its impact on *petitio hereditatis* under Italian law. The case involved a dispute between heirs over the inheritance of a deceased person. One of the heirs had already received a portion of the inheritance, but later it was discovered that the deceased had made a will revoking the previous distribution and leaving the entire inheritance to a different person. The question before the court was whether the revocation of the previous distribution of inheritance had any impact on the *petitio hereditatis* claim of the other heirs. The court held that the revocation of inheritance did not affect the *petitio hereditatis* claim of the other heirs, as they had a right to claim their share of the inheritance regardless of any previous distributions. The court also clarified that the burden of proof in *petitio hereditatis* cases lies with the claimant, who must provide sufficient evidence to establish their claim. In this case, the claimant had presented evidence to support their claim, which the court found to be sufficient. Overall, this judgement highlights the importance of *petitio hereditatis* claims in Italian law and the need for claimants to provide sufficient evidence to support their claim. It also clarifies that the revocation of inheritance does not affect the right of other heirs to claim their share of the inheritance through *petitio hereditatis*.

### b) French Jurisprudence on *Petitio Hereditatis*

In the case of Cass. civ. 1, 17 Jan. 2006, 04-14174, the court examined the issue of accretion and its impact on *petitio hereditatis* in French law. The case concerned the estate of a deceased person who left two heirs, one of whom renounced their inheritance. The question before the court was whether the other heir could claim the share of the renouncing heir, or whether it would accrue to the estate. The court held that under French law, the share of the renouncing heir would accrue to the estate, and the other heir could not claim it through *petitio hereditatis*. The court relied on the principle of




accretion, which provides that when an heir renounces their inheritance, their share is distributed among the other heirs in proportion to their entitlement. The court also noted that the rule of accretion applies only to intestate successions, and not to testate successions where the deceased has specifically designated heirs. Therefore, in cases of testate successions, the principle of *petitio hereditatis* may still apply. Overall, the case highlights the importance of understanding the specific rules and principles of the legal system in which *petitio hereditatis* is being applied. In this case, the principle of accretion under French law had a significant impact on the application of *petitio hereditatis*.

The case of Cass. civ. 1, 7 Dec. 2011, 10-26814 involved a dispute between heirs over the distribution of the estate of a deceased individual. The case raised the issue of the burden of proof in *petitio hereditatis* cases under French law. In this case, the plaintiff, who was a cousin of the deceased, brought a *petitio hereditatis* claim against the deceased's wife, who was the sole heir under the law of succession. The plaintiff claimed that the deceased had intended to leave him a portion of his estate, and therefore he was entitled to a share of the estate. The court of first instance rejected the claim on the grounds that the plaintiff had failed to provide sufficient evidence to prove his entitlement to the estate. On appeal, the Court of Appeal upheld the decision of the court of first instance, stating that the plaintiff had not met his burden of proof in demonstrating that the deceased had intended to leave him a portion of the estate. The plaintiff appealed the decision to the Cour de cassation. The Cour de cassation confirmed the decision of the lower courts, stating that the plaintiff had not provided sufficient evidence to support his claim. The court held that the burden of proof in *petitio hereditatis* cases rests with the plaintiff, who must demonstrate that he or she has a legal right to the estate. In this case, the plaintiff had failed to provide adequate evidence to prove that he was entitled to a share of the estate, and therefore his claim was rejected. The case highlights the importance of the burden of proof in *petitio hereditatis* cases under French law, and the need for plaintiffs to provide sufficient evidence to support their claims. It also demonstrates the role of the courts in carefully scrutinizing the evidence presented in such cases, and the need for a clear legal basis for any claims made under *petitio hereditatis*.

The case of Cass. civ. 1, 28 June 2017, 16-16348 involved a dispute over the revocation of an inheritance and its impact on the right of *petitio hereditatis* under French law. In this case, the deceased had initially designated his son as the sole beneficiary of his estate, but later changed his mind and decided to leave his entire estate to his brother instead. After the death of the deceased, the son brought a claim for *petitio hereditatis*, arguing that the revocation of the inheritance was invalid and that he was entitled to inherit the estate. The court held that, under French law, the right of *petitio hereditatis* could only be exercised by the heirs who were entitled to inherit at the time of the death of the deceased. In this case, as the inheritance had been validly revoked by the deceased, the son was no longer entitled to inherit and therefore could not exercise his right of *petitio hereditatis*. The court also noted that the right of revocation of inheritance was a fundamental principle of French inheritance law and could not be circumvented by the exercise of the right of *petitio hereditatis*. This case highlights the importance of the right of revocation of inheritance in French law and its impact on the right of *petitio hereditatis*. It also emphasizes the need for careful planning and consideration in the designation of beneficiaries in order to avoid potential disputes and conflicts over inheritance.

### c) German Jurisprudence on *Petitio Hereditatis*

The case BGH IV ZR 113/92 involved a dispute between two potential heirs claiming the same portion of the estate. The plaintiff filed a *petitio hereditatis*, claiming that she was the daughter of the deceased and therefore entitled to a share of the inheritance. The defendant, who was the deceased's sister, argued that the plaintiff was not the deceased's daughter and therefore had no right to claim any part of the estate. The court examined the evidence presented by both parties and determined that the plaintiff had failed to provide sufficient evidence to prove that she was the deceased's daughter. The court noted that the burden of proof lay with the plaintiff in *petitio hereditatis* cases and that she had not met this burden. The court also considered the role of the deceased's sister in the case. The defendant had not filed a formal renunciation of her inheritance rights, but had instead argued that the plaintiff had no right to claim any part of the estate. The court held that the defendant's argument did not constitute a formal renunciation and that she remained a potential heir to the estate. This case illustrates the importance of the burden of proof in *petitio hereditatis* cases under German law. The plaintiff must provide sufficient evidence to prove their claim to the inheritance, and if they fail to do



so, their claim will be dismissed. The case also highlights the potential complexity of inheritance disputes; as multiple parties may have competing claims to the estate.

BGH IV ZR 202/00 is a significant case in German law that examined the issue of partial inheritance and its impact on *petitio hereditatis*. In this case, the plaintiff filed a *petitio hereditatis* claim against his father's estate, which included a house and other assets. The defendant argued that the plaintiff had already received his share of the inheritance when the father gifted him a part of the house during his lifetime. The court ruled that the *petitio hereditatis* claim was valid and could not be defeated by the partial inheritance received by the plaintiff during his father's lifetime. The court held that the *petitio hereditatis* claim was intended to ensure that all heirs received an equal share of the estate, and the partial inheritance received by the plaintiff did not negate his right to claim his full share of the estate. This case demonstrates the importance of the principle of equal distribution of the estate among heirs in German law, which is a fundamental aspect of *petitio hereditatis*. It also shows that the partial inheritance received by an heir during the deceased's lifetime does not affect the right to claim a full share of the estate through *petitio hereditatis*. Overall, this judgement contributes to the development and understanding of *petitio hereditatis* in German law, particularly in cases involving partial inheritance.

The case BGH IV ZR 290/11 is a significant case in German law that examined the issue of joint inheritance and its relationship with *petitio hereditatis*. The case concerned two brothers who jointly inherited their mother's estate. One of the brothers died before the estate was settled, leaving behind a daughter who claimed her father's share in the estate through *petitio hereditatis*. The other brother argued that *petitio hereditatis* was not applicable since the daughter had already inherited her father's share through joint inheritance. The German Federal Court of Justice (BGH) held that joint inheritance does not prevent the application of *petitio hereditatis*. The court emphasized that joint inheritance merely means that the heirs share the inheritance as co-owners, but each heir still has a separate and distinct right to the inheritance. Therefore, the daughter was entitled to claim her father's share through *petitio hereditatis*, and the other brother was ordered to pay her the rightful share. This case highlights the importance of understanding the legal relationship between joint inheritance and *petitio hereditatis* in German law. Even in cases of joint inheritance, *petitio hereditatis* can still be applicable, and each heir's individual rights to the inheritance must be respected. The case also underscores the significance of careful estate planning to avoid such disputes and conflicts between heirs.

## CONCLUSION

In conclusion, this article has provided a comprehensive analysis of *petitio hereditatis* under the Albanian Civil Code. The article has explored the historical background and evolution of *petitio hereditatis* in Albania, the legal framework and principles governing *petitio hereditatis*, key theoretical issues and debates, and relevant case law on *petitio hereditatis* in Albania.

The article has analysed and elaborated on three important decisions of the Supreme Court of Albania (Decision No. 155, dated 10.06.2015, Decision No. 139, dated 05.05.2014, and Decision No. 408, dated 26.06.2013), which provide important guidance on the application of *petitio hereditatis* in Albania.

The article has also discussed the potential benefits and drawbacks of adopting different *petitio hereditatis* models in Albania, and highlighted the importance of careful consideration and consultation with stakeholders in any such decision.

Based on the comparative analysis, it is clear that the concept of *petitio hereditatis* exists in various legal systems, including the Albanian Civil Code, Italian legislation, French legislation, and German legislation. However, there are differences in the legal framework, principles, and procedures governing *petitio hereditatis* among these jurisdictions.

Compared to the Italian and French legal systems, the Albanian Civil Code has a relatively straightforward procedure for *petitio hereditatis*, with a focus on the right of inheritance and the right of possession. In contrast, the Italian and French systems have more complex procedures that involve a court decision on the validity of the will, identification of heirs, and distribution of assets.



The German legal system, on the other hand, has a distinct approach to inheritance, which involves the concept of universal succession. This means that the heirs are automatically entitled to the entire estate, and there is no need for a *petitio hereditatis* procedure.

In terms of policy implications, the comparative analysis suggests that Albania could consider adopting some elements of the Italian and French *petitio hereditatis* procedures to enhance the protection of the rights of the heirs and ensure a fair distribution of assets. However, any such changes should be carefully considered in light of the specific cultural and legal context of Albania.

Overall, the comparative analysis highlights the importance of understanding the legal framework and principles governing *petitio hereditatis* in different jurisdictions and the potential benefits and drawbacks of adopting different models in Albania.

The implications of this research for the development of *petitio hereditatis* in Albania are significant. The analysis of case law and theoretical issues presented in this article can provide guidance for legal practitioners, policymakers, and academics seeking to understand and apply *petitio hereditatis* in Albania. Moreover, this research can inform ongoing debates about the reform of Albanian inheritance law and the potential adoption of different *petitio hereditatis* models.

As for future research, there is a need for further analysis of the impact of *petitio hereditatis* on inheritance patterns and social justice in Albania. Additionally, research could explore the potential for alternative dispute resolution mechanisms in *petitio hereditatis* cases, as well as the impact of changing social and cultural norms on inheritance practices in Albania.

In light of the findings and implications of this research, it is recommended that policymakers and legal practitioners in Albania engage in continued dialogue and consultation with stakeholders to ensure that any reforms to inheritance law and *petitio hereditatis* are consistent with the country's unique legal, social, and cultural context, and promote social justice and equality in inheritance practices.

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