



INHERITANCE LAW



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المجلة
القضائية

Prescription of the claim of owners of the reserved portion from the disposable portion of an estate in the Non-Mohammedan confessions

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The Act of June 23, 1959 (Law of Inheritance for non-Mohammedan confessions) specified the manner of devolution of the deceased's estate either to his legal heirs or to the legatees as voluntarily expressed in the deceased's duly set up will.

Pursuant to Article 14 of the 1959 Act, the legal heirs are divided into several categories:

1. 1st category: Children and their descendants.
2. 2nd category: Mother, father and their ascendants.
3. 3rd category: Brothers, sisters and their descendants.

In Addition to Wife and Husband.

As to the legatees, they are chosen by the testator who shall also determine the bequeathed portions in his will provided that he respects the rights of the reserved portion's owner(s) (mandatory heir(s)) defined in Article 58 *et seq.* of the 1959 Act with regard to the first and second categories exclusively and one of the spouses and within the ratios fixed by the law. This condition is set due to many familial and social considerations and aims at protecting some of the deceased's closest heirs who should not be deprived of their reserved portions as per the law.

By law, the reserved portion falls under public policy and has precedence over any private settlements and /or agreements. This means that the testator does not have the right to deprive the mandatory heir of the reserved portion under any circumstance, may not make the devolution of the reserved portion dependent on any condition or /and obligation, may not waive it before its date of maturity or make it the subject matter of any agreement whether by selling, donating or leasing it, otherwise, any act in that respect will be null. In addition, the Lebanese law has considered that such action is considered as an agreement related to a future inheritance.

Conversely, the equivalent of the reserved portion in the French Civil Code is “la réserve héréditaire” or “the inherited portion” as provided for in Article 912 thereof.

Therefore, the will should be executed to the extent of the legal disposable portion of the Testator's estate, with the remainder being transferred to the aforesaid owners of the reserved portions, each within the limit of his legal right. If it exceeds the legal disposable portion, the will shall not be set aside but instead shall be reduced to the extent of the legal disposable portion by means of a lawsuit filed by the owners of the reserved portions as well as their general heirs, mandates or successors pursuant to Articles 65 and 68 of the Law of Inheritance for non-Mohammedan confessions.

The purpose of filing such lawsuit is to acquire a real personal right given to the owners of the reserved portions by law and not by the deceased who deprived them of his estate in his will. As

such, this lawsuit is considered a financial claim. Furthermore, the creditors of reserved portions' owners can, in their turn, file a derivative action in order to claim their personal debts from said portions and can as well file an *actio Pauliana* (Action Paulienne in French) pursuant to Article 278 of the Lebanese Law of Obligations and Contracts, if the conditions required to file it are met.

The question to be asked in this context is whether, in the Lebanese law, there is any prescription when it comes to the filing of the lawsuit contesting the execution of the will by the reserved portions' owners.

To answer this question, we should first of all differentiate between the “reserved portion” and the “inherited right”.

The inherited right is a personal right given to the heirs as a result of the death of their deceased. In fact, the 1959 Act did not provide for any time limit to claim such right by the heirs. Consequently, the inherited right itself as well as the legal procedure pertaining thereto are not subject to prescription, and the heirs are entitled to claim their inherited rights at any time and *ad infinitum*.

The reason why the inherited right is imprescriptible *ad infinitum* lies in the fact that it constitutes a civil status for the person and falls under personal status matters that are not subject to the prescription provided for in Article 344 of the Lebanese Law of Obligations and Contracts. Furthermore, the lawsuit in this respect is one of the right appurtenances and a legal means to protect it. In other words, it is the right exercised before the tribunal, and as such depends on the nature of the right to be protected whether in terms of its continuity or in terms of its prescription. This means that if the original right is imprescriptible, the lawsuit that protects it will be imprescriptible as well. (Court of Cassation, Civil Chamber, ruling N° 81, dated June 22, 1973, case of El Khoury/Mehawej)

It is also worth noting that the objection to the ruling determining heirship by any of the heirs following its formal rendition is time-barred (Court of Cassation, Second Civil Chamber, ruling N° 58, dated June 23, 1967).

As for the reserved portion, the Lebanese Law did not mention anything related to its prescription in the 1959 Act. It only provided, in Articles 65 and 68 of said Act, that only the heirs, who are the

owners of the reserved portions, or their general heirs, mandates or successors, have the right to reduce the will. Conversely, the French Civil Code was clear and assertive in its Article 921 as it put an obligation on those who have the capacity or their descendants to bring a case within maximum five years from the date of the opening of the succession or two years from the date when the heirs became aware of the breach carried on their reserved portion, provided that such time limit does not exceed ten years.

However, according to the Lebanese jurisprudence, more particularly that of the Civil Court of Cassation, if we suppose that the heir's right to file a lawsuit remains existing *ad infinitum*, on grounds that it is inherent to the heir's capacity that is always existing, this will result in having all wills susceptible to being set aside by the owner of the reserved portion and consequently by his heirs indefinitely, which will affect the stability of the legal transactions. This stability was among the reasons that prompted the legislator to take it into account when providing for the extinguishment of the right to claim the reserved portion or for its acquisition through acquisitive prescription. Therefore and as per the same jurisprudence, all the prescriptible obligations provided for in Article 344 of the Lebanese Law of Obligations and Contracts are necessarily the same obligations provided for in Article 119 of the same Law, which include "*the legal acts*" that the will falls under. Consequently, it subjected the prescription time limits of such claims, including the right to claim the reserved portion, to the general rule, being the ten-year prescriptive period in implementation of Article 349 of the Lebanese Law of Obligations and Contracts (Court of Cassation, Civil Chamber, ruling N°4 dated May 26, 1983).

Moreover, in a ruling it rendered in 2009, the Court of Cassation confirmed its jurisprudence again by deciding that there is no time limit for the filing of a lawsuit to claim the reserved portion and that said lawsuit shall remain permitted all through the prescription period pertaining to the asserted right (Court of Cassation, Civil Chamber, ruling N°34 dated March 3, 2009).

As for the calculation of the prescription period, it starts to run from the day the debt becomes due pursuant to Article 348 of the Lebanese Law of Obligations and Contracts.

Faced with the silence of the law, the Lebanese jurisprudence considered that the right arises and the debt becomes due from the date of the Testator's death (Court of First Instance of Mount Lebanon, 7th Civil Chamber of Jdeidet El Metn, Judgment N°90 dated August 8, 2010, not

published), unlike the French Law which provided that the prescription period starts to run from the date of the opening of the Testator's succession and not from the date of his death. As a matter of fact, the will is considered, in the Lebanese jurisprudences, to be among the contracts that transfer the property and is consequently subject to the provisions of the prescription that starts to run from the day the obligation becomes due at the date of the death (Civil Sole Judge in Beirut, judgment dated August 31, 1956).

On a final note and in the silence of the Lebanese law in this regard, the Civil Chamber of the Court of Cassation *has rightly* decided in both aforesaid cases by being just to the “inherited right” owner, by not imposing restrictions on him with regard to the period of prescription of his right to claim his inheritance, and to the legatees, by imposing restrictions on the owners of the reserved portions with regard to exercising their right to contest the will within a specific time limit and that is in order not to affect the stability of the legal transactions.