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THE IMPORTANCE OF ADOPTION IN SERBIAN INHERITANCE LAW

ABSTRACT: Although adoption in the legal system of the Republic of Serbia is primarily recognized as a key institution of family law—particularly in safeguarding the rights and interests of minor children without parental care—it also holds significance in inheritance law, especially in delineating the circle of intestate heirs. Since the enactment of the Family Law Act in 2005, Serbian legislation has embraced the concept of full adoption, equating the legal relationship between adoptive parents and adoptees with that of biological kin in terms of mutual rights and obligations. Nonetheless, Serbian inheritance law continues to recognize the concept of incomplete adoption, regulating the legal consequences arising from such relationships established prior to the Family Law Act. Unlike full adoption, incomplete adoption does not constitute a permanent legal relationship. Accordingly, the continued application of provisions governing the inheritance status of adoptive parents and adoptees under incomplete adoption is both legitimate and necessary. This legislative approach avoids legal gaps and contributes to greater legal certainty regarding the rights, obligations, and legal status of relatives within incomplete adoptive relationships. In the context of inheritance law, this framework significantly affects three key issues: who qualifies as an intestate heir, the scope of inheritance rights, including the size of the inheritance share, and the conditions under which these rights are exercised. This paper analyzes the role of adoption in Serbian inheritance law, with a brief historical overview.

KEYWORDS: full adoption, incomplete adoption, adoptive kinship, intestate succession, Inheritance Act

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1. Introduction: Concept and Forms of Adoption

The introductory section of this paper first outlines the theoretical concept of the institution of adoption, as well as the forms of adoption recognized within the legislative framework of the Republic of Serbia. Kinship by adoption—also referred to as adoptive or civil kinship—constitutes a legally relevant category in Serbian inheritance law, particularly due to the range of legal, more precisely inheritance-related, consequences that arise from the establishment of family relationships, i.e., kinship and parental ties created through legal means.

Adoptive kinship, as noted by Cvejić Jančić (2009, p. 66), is established through legal procedure—namely, the adoption of another's minor child—thereby creating not only a parental relationship between the adopter and the adoptee, but also a broader kinship network, the scope of which depends on whether the adoption is full or incomplete. As Kovaček (2009, p. 343) notes, adoption represents a form of protection for children without parental care that is individual in character, in contrast to institutional placement, which is collective. Moreover, adoption is considered the most effective form of protection, as the child is placed within a family that fulfills the same functions as a natural, biological family.

Several authors underscore the dual nature of the institution of adoption in contemporary legal systems². As Jović (2005) observes, adoption simultaneously constitutes the most comprehensive form of family-law protection for children without parental care and the legal mechanism through which a parental relationship between adopter and adoptee is established.

This introductory section will clearly distinguish between full and incomplete adoption as legal institutions of family law, both of which carry significant implications for inheritance relationships.

A key distinction between full and incomplete adoption, as forms of child protection, lies in the establishment of either a narrower or broad-

² For more on adoption in comparative law see Krstinić M., Dalibor; Vasiljković Z., Jovana (2020). Adoption Institute in Comparative Law. *Strani pravni život*, LXIV (1), 113–125.

er kinship network, the question of permanence versus revocability, and the nature of the adoptee's relationship with their biological parents and other blood relatives. In the context of inheritance-related effects and consequences of adoption, it is of considerable importance whether the adoption is full or incomplete.

In the case of full adoption, Cvejić Jančić (2009, p. 67) notes that kinship is established between the adopter and all their blood relatives on one side, and the adoptee and all their descendants on the other. The adoptee, therefore, severs all ties with their biological parents, as well as with other blood relatives. This is affirmed by Article 104 of the Family Law Act (2005), which stipulates that adoption establishes equal rights and duties between the adoptee and their descendants, and the adopter and their relatives, as those existing between a child and parent, or among other kin.

The adoptee, as Cvejić Jančić (2009, p. 67) further emphasizes, fully enters into the family relationships and familial structure of the adopter, thereby forming a permanent and irrevocable bond in which the adoptee acquires the status of a marital child. In life situations where, for various reasons, a child cannot live with their parents and cannot be cared for within the extended family, adoption, as Čović (2023) claims, represents the next best solution. It provides a permanent form of protection that enables the child to fully develop a sense of belonging and shared identity with the adoptive family. This is especially true in the case of full adoption, which is currently the only legally recognized model under Articles 88–109 of the Family Law Act (2005), which regulate the conditions for establishing adoption, jurisdiction, legal effects, and termination of adoption.

However, in the case of incomplete adoption—which could be established until the enactment and, more precisely, the entry into force of the Family Law Act, pursuant to the provisions of the previously applicable Marriage and Family Relations Act (1980)³—the relationship is not

³ For a detailed discussion of the law, see: Mitić, M. (1981). *Zakon o braku i porodičnim odnosima SR Hrvatske i SR Srbije*. Zbornik radova Pravnog fakulteta u Nišu, XXI, 59–77; and Mitić, M. (1982). *Zakon o braku i porodičnim odnosima SR Hrvatske i SR Srbije: nastavak iz prethodnog broja Zbornika*. Zbornik radova Pravnog fakulteta u Nišu, XXII, 63–81 (see p. 76 for adoption).

permanent and is characterized by revocability, resulting in a narrower scope of inheritance-related effects. This legal institution continues to hold considerable significance in inheritance law, given that previously established incomplete adoptions still produce legal effects.

Unlike full adoption, incomplete adoption is established solely between the adopter, on one side, and the adoptee and their descendants, on the other. As Cvejić Jančić (2009, p. 67) reminds us, the adopter's relatives do not enter into any legal or kinship relationship with the adoptee or their descendants, thereby creating a significantly narrower kinship network.

Another highly important feature—perhaps the most important in the context of incomplete adoption—is that the establishment of this form of kinship does not sever the adoptee's ties with their biological parents and other blood relatives. This is especially relevant given that the legislation in force at the time explicitly provided for the revocability of this form of adoption⁴.

2. Significance of Adoption in Roman Law: A Brief Historical Overview

This paper includes a concise analysis of the institution of adoption from its earliest legal origins in Roman law.

Adoption as a legal institution reaches far back into history, originating in the period of gentile organization—before the emergence of law and legal order in the modern sense. At that time, as Čović (2023) reminds us, adoption primarily served the interests of the gens, or clan, while the interests of the adoptee and adopter were neglected and subordinated to the needs of the broader social community.

However, as Antić (2014, p. 115) notes, the purpose of adoption evolved over the centuries⁵ in accordance with societal needs and pre-

⁴ For more details on the differences between full and incomplete adoption, see: Čeranić, D. (2015). Potpuno vs. nepotpuno usvojenje. Zbornik radova „Odnos prava u regionu i prava Evropske unije“, 170–183.

⁵ For a detailed discussion of the evolution of adoption as a legal institution from Roman to modern law, see: Kitanović, T., Ignjatović, M. (2013). Evolucija

vailing conceptions of public order. In ancient Rome⁶, the aim and function of adoption underwent a significant transformation: it ceased to serve the interests of the gens and instead became a means of protecting individual interests—particularly those of the adopter and his family. Adoption, as Čović (2023) again emphasizes, came to be understood as a way of extending the family line and preserving the family cult, but also as a legal mechanism for transferring the property of a *pater familias* without biological heirs to an adoptee. In this way, Roman adoption laid the groundwork for the modern concept of adoption, which increasingly affirms individual interests and familial autonomy.

Roman law, according to the Law of the Twelve Tables, recognized two forms of adoption, as noted by Kitanović and Ignjatović (2013): *adrogatio* (adrogation), used for adopting a person *sui iuris*, and *adoptio* (adoption), used for adopting a person *alieni iuris*. In the first case, as Antić (2014, p. 115) explains, the entire family of the adoptee came under the authority (*potestas*) of the adopter. In the second case, the adoptee entered the adopter's family as though born into it, severing all legal ties with their biological family.

However, under Justinian's codification, two new forms of adoption were introduced: *adoptio plena*, which represented full adoption, and *adoptio minus plena*, which constituted incomplete adoption⁷.

Statutory, or intestate, succession under *ius civile* was regulated by the Law of the Twelve Tables, which, as Udovičić (2019) notes, recognized three orders of heirs: *sui heredes*, *proximus agnatus*, and *gentiles*. Accordingly, *sui heredes*—the closest agnatic relatives of the decedent who were under the authority (*potestas*) of the *pater familias*—belonged to the first order of statutory heirs. This group included not only the wife in a *manus* marriage and the decedent's children, whether biological or

ustanove usvojenja od rimskog do savremenog prava. Zbornik radova Pravnog fakulteta u Novom Sadu. 4, 163–184.

⁶ For a detailed discussion of adoption in Roman law, see: Babić, I. (2011, p. 49), and Antić, O. (2014, p. 115). For more details on adoption forms in Ancient Rome, see also: Čović, A. (2023, pp. 47–50).

⁷ For a detailed discussion of these forms in Roman law, see: Antić, O. (2014, p. 115) and Kitanović, T., Ignjatović, M. (2013, pp. 167–168).

adopted (through *adrogatio* or *adoptio*), but also the grandchildren of previously deceased or emancipated sons (Udovičić, 2019).

The second order of heirs, *proximus agnatus*, comprised relatives who no longer lived within the same household but had once belonged to the same familial community as the decedent. This group included the decedent's siblings and their descendants (Udovičić, 2019).

The third order of statutory heirs consisted of the *gentiles*—those who bore the common name of the clan and were members of the same gens. However, as Malenica (2003, p. 236) observes, inheritance by heirs of this order was more a theoretical possibility than a practical one (Kovačević, 2019; Husenspahić & Oruč, 2020).

Under Justinian's codification, adoption, as Babić (2015, p. 60) emphasizes, was brought closer to the natural relationship between parent and child. Moreover, as Udovičić (2019) notes, adoption was taken into account in matters of statutory succession, such that adopted children were included in the first order of heirs and granted inheritance rights.

This codification, as Marković (1977) explains, established blood kinship as the basis for inheritance, dividing relatives into three classes—descendants, ascendants, and collaterals—and determining the statutory order of succession accordingly. This structure was later adopted by Pandect law and subsequently by modern legal systems.

3. Significance of Adoption in Serbian Inheritance Law: A Brief Historical Overview

This chapter presents a concise comparative analysis of the inheritance-related significance of adoption, as regulated by the provisions of previously applicable laws in the field of inheritance law. It focuses on the normative framework governing adoptive kinship from the enactment of the Serbian Civil Code of 1844 to the currently applicable legislation regulating inheritance matters.

The Inheritance Act of the Federal People's Republic of Yugoslavia (1955) governed only the inheritance consequences of incomplete adoption, given that this form was the sole legally recognized arrangement

under the provisions of the then-valid Basic Adoption Act of the FPRY (1947). Accordingly, the adoptee and their descendants were granted statutory inheritance rights in relation to the adopter, but not in relation to the adopter's relatives. Although the act of adoption itself, pursuant to the provisions of the Basic Adoption Act, could limit or entirely exclude such rights in cases where the adopter had biological children, the adopter and their relatives, as Vidić (2006) notes, could not be statutory heirs of the adoptee.

Under the Inheritance Act of the Socialist Republic of Serbia (1974), the inheritance-related consequences of adoption were regulated exclusively in relation to incomplete adoption, in a manner largely consistent with the provisions of the previously applicable law. This remained the case until the enactment of the Adoption Act (1976), which introduced the legal institution of full adoption. Thus, the establishment of an adoptive relationship did not entail the loss of statutory inheritance rights between the adoptee and their biological relatives; however, certain limitations were introduced that had not been foreseen in earlier federal legislation.

As a rule, and as noted by Đorđević (1974) and Antić (2014, p. 122), the adoptee and their descendants were entitled by law to inherit only from the adopter, not from the adopter's relatives, while the adopter could not inherit from the adoptee in cases of incomplete adoption. An exception was provided in circumstances where the adopter lacked the means necessary for subsistence; in such cases, and upon the court's assessment of compelling reasons, the adopter could be granted the same inheritance rights in relation to the adoptee and their descendants as they would have toward their own biological descendants. This effectively excluded the statutory inheritance rights of the adoptee's biological parents.

Following the introduction of full adoption, the provisions of the Inheritance Act of the Socialist Republic of Serbia (1974) equated full adoption with blood kinship, thereby producing identical inheritance consequences.

4. Inheritance Effects of Adoption in the Republic of Serbia

Under the current Serbian inheritance law, adoption constitutes a significant legal basis for establishing inheritance relationships. However, the inheritance status of adoptive relatives depends on the form of adoption—whether full or incomplete. The currently applicable Inheritance Act of the Republic of Serbia (1995) regulates the inheritance consequences of both full and incomplete adoption, taking into account that, at the time of its enactment, Articles 151–199 of the Marriage and Family Relations Act (1980) were in force, which governed both forms of adoption.

It was only in 2005, with the adoption of the Family Law Act—currently the applicable law—that a single form of adoption was codified: full adoption. This form is entirely equated with blood kinship and the legal relationship between parent and child.

The provisions of the Inheritance Act (1995) concerning the inheritance status of adoptive relatives arising from incomplete adoption remain applicable in cases where such adoptions were established prior to the entry into force of the Family Act (2005) and continue to produce legal effects.

The legislator has codified full adoption as an indissoluble relationship, equating the legal status of the adoptee with that of the biological child of the adopter. The Family Act regulates the mutual relationship between the adoptee and the adopter, as well as between the adoptee and the biological parents. Specifically, Articles 104 and 105 stipulate that adoption establishes equal rights and duties between the adoptee and their descendants and the adopter and their relatives, as between a child and parent or other relatives. At the same time, parental rights of the biological parents cease, except in cases of adoption by the spouse or extramarital partner of the child's parent, and the rights and duties of the child toward their biological relatives, and vice versa, also cease.

In accordance with this, the equivalence with blood kinship—under Article 34 of the Inheritance Act (1995)—means that an adoptee from a full adoption, their descendants, and their adoptees from full adoption and their descendants inherit from the adopter and the adopter's relatives in the same manner as children and their descendants inher-

it from their parents and their relatives. As a consequence, the adoptee and their descendants cannot be legal heirs of the adoptee's blood relatives, and vice versa. This inheritance relationship is reciprocal, so that—under Article 37 of the Inheritance Act (1995)—the adopter from a full adoption and their relatives inherit from the adoptee and their descendants in the same way that parents and their relatives inherit from their children and their descendants.

Unlike full adoption, incomplete adoption, as noted by Đurđević (2023, p. 100), operates *inter partes*, as it establishes a kinship relationship exclusively between the adopter and the adoptee and their descendants, without creating any kinship ties between the adoptee and the adopter's relatives. Therefore, the inheritance consequences of incomplete adoption can be viewed in two ways: as the inheritance status of the adoptee and as the inheritance status of the adopter in cases of incomplete adoption.

The limited inheritance consequences are reflected—under Article 35, paragraph 1 of the Inheritance Act (1995)—in the fact that the adoptee from an incomplete adoption, their descendants, and their adoptees from full adoption and their descendants inherit only from the adopter, not from the adopter's relatives, in the same way that children and their descendants inherit from their parents, provided that such rights were not limited or excluded at the time of adoption. Accordingly, the establishment of incomplete adoption does not affect the statutory inheritance rights between the adoptee and their blood relatives⁸.

The previous Marriage and Family Relations Act (1980) regulated the circumstances under which the rights of adoptees in cases of incomplete adoption could be limited or excluded. Thus, under Article 176, paragraph 1, if the adopter had biological children, the inheritance rights of the adoptee toward the adopter could be limited or entirely excluded. Moreover, there was a statutory possibility for such limitation or exclusion of inheritance rights, if the spouses jointly adopted the child, to be determined differently for each of them.

⁸ This follows from the provision of Article 35, paragraph 2: "Incomplete adoption does not interfere with inheritance between the adoptee and their blood relatives."

Under Article 38, paragraphs 1 and 2 of the Inheritance Act (1995), the general rule is that an adopter in an incomplete adoption, as well as their relatives, do not inherit from the adoptee. However, the legislator has provided an exception, contingent upon the fulfillment of specific conditions: namely, if the adopter lacks the means necessary for subsistence, while the adoptee has no heirs from the first order of succession, and if the adoptee's inheritance rights were not excluded at the time of adoption. In such cases, pursuant to Article 38, paragraphs 2 and 3 of the Inheritance Act (1995), the adopter may, within one year of the adoptee's death, request a lifelong usufruct over a portion of the estate. In deciding on such a request, the court considers the duration of the adoption, the scope of the adoptee's inheritance rights, the value of the estate, and the financial circumstances of the heirs claiming succession.

According to Article 38, paragraph 4 of the Inheritance Act (1995), if the adopter dies before exercising the right to inherit, that right does not transfer to their heirs. Given that the institution of lifelong usufruct constitutes a personal servitude tied to the individual who enjoys it, it ceases upon the adopter's death.

Additionally, Article 36 of the Inheritance Act (1995) prescribes another instance of exclusion or loss of the adoptee's statutory inheritance rights, along with those of their descendants, toward the adopter, in cases where the adopter had filed a request for termination of adoption, and where, after the adopter's death, it is determined that the request had been well-founded.

On the other hand, as Đurđević critically observes (2023, p. 103), the reverse situation is not regulated: there is no provision allowing the adoptee's heirs to continue the proceedings for termination of adoption initiated by the adoptee during their lifetime, with the aim of establishing the merits of the claim. Such a possibility could potentially affect the adopter's statutory inheritance rights.

5. Conclusion

The institution of adoption—its forms, purposes, and underlying objectives—has evolved over time, from Roman law to contemporary legal systems. Accordingly, the inheritance status of adoptive relatives has also undergone transformation. Within the framework of modern inheritance law, adoption constitutes a significant legal basis for the application of statutory inheritance rules.

Under the positive law of the Republic of Serbia, only full adoption is legally recognized. However, as a remnant of previously applicable legislation, incomplete adoption may still appear in legal practice. This form of adoption could be established until the enactment and entry into force of the Family Act in 2005, and its inheritance effects are acknowledged in accordance with the provisions of the Inheritance Act of 1995.

Full adoption produces inheritance consequences identical to those arising from blood kinship. In inheritance law, this means that the legal position of the adoptee and their descendants is fully equated with that of the adopter's biological child and their descendants, while the adopter and their blood relatives assume the legal position of parents and other blood relatives of the adoptee.

By contrast, the inheritance effects of incomplete adoption are more limited, subject to specific statutory restrictions that must be explicitly emphasized at the time this form of adoption is established. As a result, incomplete adoption does not affect the inheritance relationships between the adoptee and their blood relatives. As a rule, the adopter has no inheritance rights with respect to the adoptee, except in certain exceptional cases provided by the legislator.

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