

# CURRENT SITUATION AND RECOMMENDATIONS FOR IMPROVING THE PROVISIONS OF THE 2015 CIVIL CODE ON COMPULSORY INHERITANCE

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In any class-based social system, the issue of inheritance also has a particularly important position. In legal institutions, this is an important legal form to protect civil rights in general. Therefore, inheritance has become an indispensable need for the life of each individual, family and social community as stipulated in the Constitution and specified in specialized documents. Accordingly, Vietnamese civil law regulates inheritance rights quite strictly to ensure the legitimate rights and interests of citizens. In addition to inheritance rights, the law also respects the rights of people with property left behind, allowing them to dispose of their property after death, but this freedom is limited, the state prioritizes the division of inheritance. Inheritance to a person does not depend on the content of the previous will. So where does the law have this priority? This article will focus on researching the current situation of the law and recommending improvements in civil law provisions on forced inheritance (inheritance does not depend on the content of the will).

**Keywords:** *Situation; Will; Inheritance; Regardless of content; Provisions of the Civil Code.*

## 1. Introduction

Division of inheritance according to a will is an activity performed by an authorized or competent subject according to certain principles, in accordance with the basis for division prescribed by law. For compulsory inheritance regime, inheritance is imposed on cases where the inheritance is not in the will or is less than prescribed. The article focuses on analyzing and researching specific provisions of civil law on compulsory inheritance, the current situation of legal provisions and providing directions for improving the provisions on compulsory inheritance.

## 2. Research overview

Compulsory inheritance is a legal inheritance institution regulated through periods of legislative development in Vietnam. There have been many researchs on compulsory inheritance in Vietnam up to now, these articles were conducted at different times based on different legal documents such as: Inheritance Ordinance, The 1995 Civil Code, The 2005 Civil Code and currently 2015 Civil Code as follows: The article *Inheritance does not depend on the content of the will according to the 2005 Civil Code* (Hong, 2015); article *It is necessary to accurately determine the conditions of compulsory heirs in resolving inheritance disputes* (Hang, 2020); the article *The right to self-determination of the testator* (Thanh, 1996); research *Heirs do not depend on the content of the will: minor*

*children without working capacity* (Quynh, 2018); research *Law on inheritance and practice of dispute resolution* (Tuyet & Giang, 2017);... However, up to now, there has been no article that has conducted in-depth research from a general perspective on the regulations and practical application of the law on compulsory inheritance under the current Civil Code. Therefore, this research from the perspective of “Current situation and recommendations for improving the regulations of the 2015 Civil Code on compulsory inheritance” is necessary in the current context.

## 3. Research method

This article uses a combination of analysis - synthesis and comparative legal methods, specifically as follows: The analysis and synthesis method is mainly used to analyze and clarify theoretical issues related to the provisions of the law on inheritance regardless of the content of the will. In addition, the analysis - synthesis method is also used to assess the shortcomings in the current law on compulsory inheritance and proposing directions for improving related legal regulations. At the same time, the author also uses a number of other research methods such as: information collection and search method and dialectical materialism method. These methods are used flexibly and appropriately for each specific content to help achieve objective and scientific results.

## 4. Research result

#### ***4.1. Provisions of Vietnamese civil law on compulsory inheritance***

Law is a system of general rules of conduct promulgated or recognized by the State with the aim of regulating certain social relations according to principles that ensure social stability, at the same time, protect the rights and obligations of the subjects in that legal relationship. Also following the same general method and principles, the inheritance system by will in Vietnam is established on the basis of respecting the right to freedom of disposition of the person whose property is left after death. Accordingly, the law allows a person who has property before death to make a will to dispose of his or her inheritance to anyone and can disinherit an heir. However, human freedom in society depends on the regulatory mechanism of law; the level of regulatory effectiveness of law depends on public compliance with the law and the suitability of the law to regulate corresponding social relations. Accordingly, the freedom to make a will of property owners in Vietnam is limited within the framework of the law. Lawmakers have intervened in the content of the will, reserving a portion of the inheritance for the testator's closest relatives when these people are not designated by the testator to receive the inheritance or receive too little of the inheritance.

Interference in the content of the will is shown in Article 644 of the 2015 Civil Code, which restricts the right to freely make a will of the property owner by taking from other heirs to reserve for heirs regardless of the content of the will, with the value of each inheritance portion being two-thirds of the portion of the legal heir, if the inheritance is divided according to the law. This case is called inheritance regardless of the content of the will. Inheritance regardless of the content of the will (or in legal science called compulsory inheritance - hereinafter referred to as compulsory inheritance) is a special case of inheritance by law. Because the basis for the creation of inheritance rights regardless of the content of the will is based on the provisions of the law and not on the will of the testator. Accordingly, the State specifically regulates the inheritance area, the conditions for inheritance regardless of the content of the will and sets out the method for determining the value of a compulsory inheritance.

*Firstly, the inheritance does not depend on the content of the will*

The category of heirs regardless of the content of the will is the group of the closest relatives of the person leaving the inheritance, according to the provisions of the law, they are the first-order heirs, who should have inherited according to the law but were deprived of the right to inherit by the person leaving the inheritance by clearly stating in the will that they were not allowed to inherit or although not stated in the will, in reality they were not allowed to inherit or were given a part of the

inheritance but less than two-thirds of the value of a legal inheritance. Specifically, the category of compulsory inheritance includes: (i) The father and mother of the person leaving the inheritance. For fathers and mothers, there is no distinction between biological and adoptive parents. (ii) The wife and husband of the person leaving the inheritance. For the wife/husband entitled to inherit, they must be legally married according to the provisions of the Law on Marriage and Family. (iii) Minor children or adult children who are incapable of working. For children, the law does not distinguish between biological and adopted children. Thus, it can be seen that Vietnamese civil law aims to protect the rights of the subjects who are fathers, mothers, wives or husbands and children of the testator who are minors or adults but are incapable of working.

*Secondly, on the conditions for compulsory inheritance*

To be entitled to compulsory inheritance, those who are entitled to inherit regardless of the content of the will must comply with the provisions of the law. The general condition is that those who are entitled to compulsory inheritance must not refuse to inherit (Article 620 of the 2015 Civil Code) and must not be deprived of the right to inherit according to Article 621 of the 2015 Civil Code as follows: A person convicted of intentionally infringing upon the life or health of the person leaving the inheritance, or of seriously mistreating or torturing the person leaving the inheritance, seriously infringing upon the honor or dignity of that person; Regarding the act of intentionally infringing upon the life of another heir in order to receive part or all of the inheritance that the heir is entitled to; A person who deceives, coerces or prevents the testator from making a will; forging a will, altering a will, destroying a will, concealing a will in order to receive part or all of the inheritance contrary to the will of the testator. In addition, the individual must still be alive, the organization must still exist at the time of inheritance opening (the time the person with the property dies).

Furthermore, the compulsory heir must also meet the specific conditions of not being entitled to inherit or although entitled to inherit, but the value of the actual inheritance portion received is less than two-thirds of the value of a legal inheritance portion, if the inheritance is divided according to the law. In case, the compulsory heir has received in the will a value greater than two-thirds of a legal inheritance share, the will shall be implemented. Determining the value of a compulsory inheritance share: according to the provisions of law, compulsory heirs will receive a share equal to two-thirds of the value of a compulsory inheritance share.

Therefore, establishing an inheritance regime that does not depend on the content of the will is of great significance in order to protect the rights and interests of the testator's father, mother, wife, husband,

children under 18 years old and the testator's adult children who are incapable of working. Because reserving a mandatory inheritance for the weak in the family is a moral duty and demonstrates the nation's fine moral tradition in promoting responsibility among family members.

#### **4.2. Inheritance rights do not depend on the content of the will - seen from judicial practice**

The provisions of civil law on compulsory inheritance are only expressed in Article 644 of the 2015 Civil Code. However, the content of this provision is still general and unclear, leading to many shortcomings in its application in practice, specifically as follows:

##### *Firstly, the heirs do not depend on the content of the will*

According to the provisions of Point b, Clause 1, Article 644 of the 2015 Civil Code, one of the heirs regardless of the content of the will is a minor child who is incapable of working. So how to understand that a minor is incapable of working, the Civil Code and guiding documents do not have any regulations. This leads to many different views and enforcement methods regarding minors who are incapable of working being raised in the process of law enforcement. *The first view* holds that an adult child who is unable to work is a child aged 18 or older, with a reduced ability to work or a physical injury of 81% or more due to injury, illness, occupational disease or old age. *The second view* is that an adult child who is incapable of working is a child aged 18 or older who is of working age according to the provisions of the labor law and whose rate of reduced working capacity or physical injury is 81% or more due to injury, illness, occupational disease or the child is past working age (over 60 years old for men, over 55 years old for women) (Quynh, 2018). Furthermore, currently, Article 644 of the 2015 Civil Code does not have specific regulations on the time to determine when an adult child loses the ability to work and when they are entitled to compulsory inheritance. The time of determination is the time of death of the property owner or the time of division of inheritance or some other time. If determining the age of a minor and the working capacity of an adult at the time of inheritance opening, there will be cases that are not "reasonable".

##### *Secondly, the conditions for compulsory inheritance*

According to the provisions of Clause 1, Article 644 of the 2015 Civil Code, to be entitled to compulsory inheritance, the heir must "not be given the inheritance by the testator or be given only a portion of the inheritance less than two-thirds of that portion". With the above provisions, we can understand that the law only refers to the testator expressing his will in the disposition of property in the will. The heir is entitled to compulsory inheritance on the condition that is not given the inheritance by the testator. Or the heir is given an

inheritance by the testator but they are only given a portion of the inheritance that is less than two-thirds of the value of a legal inheritance portion in the will. However, in practice, the provisions on compulsory inheritance conditions are applied more broadly than the provisions of law in the spirit that when the person eligible for inheritance under Article 644 of the 2015 Civil Code is in one of two situations: In fact, if the testator is not entitled to an inheritance or has received it (either by will or by law or by both will and law, then add up both parts of the inheritance) but it is less than two-thirds of the value of a legal inheritance, then they must be given two-thirds of the value of a legal inheritance. From the law and practice, it shows that there is no consistency between theory and practice in the content of the law. This contradiction comes from the unclear way of regulating the law, leading to many difficulties in the application process in practice.

##### *Thirdly, the method of extracting the inheritance of other heirs to compensate the heir does not depend on the content of the will*

When dividing an inheritance according to a will, if there is an heir who is not subject to the content of the will, it is necessary to pay attention to the fact that the inheritance according to the will may be reduced to ensure the mandatory share of the heirs who are not subject to the content of the will. According to the regulations, there are as many heirs regardless of the content of the will as there are shares of the inheritance regardless of the content of the will. There is no share of the inheritance regardless of the content of the will that is shared among all beneficiaries. The deduction from which part of the heir's estate to compensate for the shares of the heirs does not depend on the content of the will from which part of the heirs the deduction will be made, currently, civil law and guiding documents do not have specific regulations. There are different views on this issue, most authors support the view that the missing part of the compulsory heir should be taken from the part of the inheritance that "the heir is entitled to according to the will" and "corresponds to the part that is superior to the inheritance portion that they are entitled to by law". If according to this point of view, there is an appearance of an heir regardless of the content of the will, but the inheritance portion of each beneficiary according to the will is less than the legal inheritance portion, then the inheritance portion of that person according to the will will not be reduced.

Based on the principle that the testator's right to self-determination cannot be absolute and the principle of strengthening love and solidarity in the family, the regulation on compulsory inheritance has great significance in legislative activities. Therefore, the limitations in the regulations on the heirs who do not depend on the content of the will, on the conditions for compulsory inheritance and the way to extract the inheritance of other heirs

to compensate for compulsory heirs need to be overcome to bring about the best results in practice.

#### **4.3. Some recommendations to improve legal regulations on compulsory inheritance**

*Firstly, for those who are eligible to inherit regardless of the content of the will, there must be a document with specific instructions for each case.*

According to the provisions of civil law, a minor who is incapable of working is a subject entitled to compulsory inheritance. However, what is considered “incapable of working” in this case needs to be clearly guided, in the direction of a person who is incapable of working to support himself, regardless of his economic situation. A person who is unable to work to support himself or herself can be understood as an individual who is an adult at the time of inheritance but has a mental illness or other diseases that lead to the inability to perceive, control behavior, is terminally ill, has a serious illness (full body paralysis, spinal paralysis,...), or has lost the ability to work. The guidance document must also clearly stipulate that in order to become an heir regardless of the content of the will, in the case of an adult child (18 years of age or older) who is unable to work and has a reduced rate of working capacity (physical damage) of 81% or more due to injury, illness, disability, occupational disease, due to old age, it must also be based on the conclusion of the Medical Examination Council or the Forensic Psychiatric Examination Council. Furthermore, the guidance document on compulsory inheritance cases must mention the time when it is determined that a minor child is incapable of working. Accordingly, in order to put the interests of the compulsory heir first, it is necessary to determine the age of majority based on the time of inheritance opening and the state of incapacity to work should be determined based on the time of announcement of the will, or the actual time of division of the inheritance. In order to ensure the consistent application of the law in adjudication and the rights of compulsory heirs, the Council of Judges of the Supreme People’s Court should promptly issue a Resolution providing specific guidance on how to determine whether minor children who are incapable of working are entitled to compulsory inheritance.

*Secondly, it is necessary to amend and supplement the provisions of civil law on the conditions for determining compulsory*

One of the conditions for becoming a compulsory heir is that they “have not been given a share of the estate by the testator or have been given a share of the estate less than two-thirds of that share”. The use of the phrase “only allowing the inheritance portion less than two-thirds of that portion” as prescribed in Clause 1, Article 644 of the 2015 Civil Code is understood as the testator allowing that person to enjoy the inheritance portion in the will but less than two-thirds of the legal inheritance portion. So, in the case where a

person is not given an inheritance by the testator but is entitled to inherit less than two-thirds of the legal inheritance, does he or she become a compulsory heir? Therefore, the nature and purpose of the compulsory inheritance provision is that in any case, if the compulsory heir who is entitled to inherit by will; by law or both by will and by law (both parts combined) actually inherits less than two-thirds of a legal inheritance share, they will be entitled to the full two-thirds of that legal inheritance share. So the phrase “only entitled to less than two-thirds of the legal inheritance share” is inappropriate, but “only entitled to less than two-thirds of the legal inheritance share” is correct for this case, because the heir entitled to inherit “less than two-thirds of a legal inheritance share” is a manifestation of the State’s will. Therefore, the author recommends that lawmakers should replace the phrase “only give” with “only be allowed” in Clause 1, Article 644 of the 2015 Civil Code to regulate and cover all cases.

*Thirdly, there should be written instructions on how to deduct the inheritance of other heirs to compensate for heirs who do not depend on the content of the will.*

After dividing the inheritance according to the will and identifying the heirs regardless of the content of the will, we will clearly determine which heirs actually received the inheritance and what value. Accordingly, the portion of the inheritance of the heirs, regardless of the content of the will that has not been enjoyed or is still lacking, will be reduced from which heirs, currently, the 2015 Civil Code does not have clear regulations as analyzed above. In Article 644, the 2015 Civil Code only mentions other heirs, according to the corresponding proportion that each heir is entitled to. However, as analyzed above, the reduction of the inheritance of other heirs, the other heirs here are taken from the legal heir or the testamentary heir or taken from both the legal heir and the testamentary heir to compensate for the compulsory heir. Therefore, there needs to be more specific and clear guidance on this issue. Thus, it is considered necessary to amend, supplement and have more specific guidance documents for those who are eligible to inherit regardless of the content of the will, on the conditions for determining compulsory heirs and how to extract the inheritance portion of other heirs to compensate for heirs regardless of the content of the will to ensure the effective enforcement of inheritance laws in particular and Vietnamese law in general.

#### **5. Discussion**

During the entire process of completing the research, the author searched, collected relevant sources of documents and selected appropriate information, condensed it into an article. Specifically, legal documents and reliable sources related to the compulsory inheritance regime. Accordingly, the article focuses on analyzing the provisions of the law on compulsory inheritance.

The limitations in the provisions of the law, the practical problems in the application process and proposes some solutions to improve the provisions on inheritance regardless of the content of the will

## 6. Conclusion

The provision that heirs are not dependent on the content of the will has great significance for legislative activities in Vietnam. The compulsory inheritance regime not only contributes to protecting the interests of some people who are legal heirs but is also consistent with the fine customs, practices and traditions of the Vietnamese people. The provisions on compulsory inheritance were first stipulated in

the Inheritance Ordinance of 1990, then stipulated in the 1995 Civil Code, the 2005 Civil Code and now the 2015 Civil Code. Although the 2015 Civil Code has quite complete regulations on this issue, creating a legal basis for resolving inheritance disputes, the compulsory inheritance regime still has some problems in implementation, as analyzed in terms of inheritance scope, conditions and compensation methods for compulsory heirs are still unclear. Through the research of regulations and law enforcement practices, the article makes some recommendations to improve compulsory inheritance regimes, contributing to reducing disputes and stabilizing social order.

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# THỰC TRẠNG VÀ KIẾN NGHỊ HOÀN THIỆN CÁC QUY ĐỊNH CỦA BỘ LUẬT DÂN SỰ NĂM 2015 VỀ THỪA KẾ BẮT BUỘC

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Trong bất kỳ chế độ xã hội có giai cấp nào thì vấn đề thừa kế cũng có vị trí đặc biệt quan trọng trong các chế định pháp luật, đây là một hình thức pháp lý quan trọng để bảo vệ các quyền công dân nói chung. Chính vì vậy, thừa kế đã trở thành một nhu cầu không thể thiếu được đối với đời sống của mỗi cá nhân, gia đình, cộng đồng xã hội được quy định trong Hiến pháp và cụ thể hoá trong các văn bản chuyên ngành. Theo đó, pháp luật dân sự Việt Nam quy định khá chặt chẽ về quyền thừa kế nhằm bảo đảm quyền, lợi ích hợp pháp của công dân. Bên cạnh quyền thừa kế, pháp luật còn tôn trọng quyền của người có tài sản để lại, cho phép họ định đoạt tài sản của mình sau khi chết nhưng sự tự do này mang tính giới hạn, nhà nước ưu tiên phân chia di sản thừa kế cho người không phụ thuộc vào nội dung di chúc trước. Vậy xuất phát từ đâu mà pháp luật lại có cách ưu tiên này, bài viết này sẽ tập trung nghiên cứu thực trạng quy định của pháp luật và kiến nghị hoàn thiện các quy định của pháp luật dân sự về thừa kế bắt buộc (thừa kế không phụ thuộc vào nội dung của di chúc).

**Từ khóa:** Thực trạng; Di chúc; Thừa kế; Không phụ thuộc nội dung; Quy định của Bộ luật Dân sự.