

Forced Heirship in Comparative Perspective: Rethinking the 2/3 Mandatory Share Rule in Vietnam

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ABSTRACT: The forced heirship regime is a legal mechanism aimed at ensuring the rights of heirs in vulnerable positions, even when the testator intends to exclude them. Under the 2015 Civil Code of Vietnam, such individuals are entitled to at least two-thirds of a statutory inheritance share. However, in the context of rapidly changing socio-economic conditions and international trends toward expanding freedom of testamentary disposition, this provision needs to be reconsidered for its reasonableness. The article employs comparative legal methodology and public policy analysis to compare Vietnam's regulations with representative civil law systems such as France, Germany, Japan, Switzerland, and Spain. The results indicate that Vietnam's 2/3 protection level is higher than the international average, while many countries have reduced it to 1/2 to balance heir protection and freedom of disposition. The author proposes maintaining the 2/3 level for vulnerable groups (minors, those without labor capacity) but reducing it to 1/2 for other subjects, while considering a shift from in-kind rights to monetary rights for greater flexibility. The study contributes to guiding reforms in Vietnam's inheritance law toward harmonizing traditional humanistic values and international standards.

KEYWORDS: Forced heirship; Inheritance rights; Freedom of disposition of estate; Forced heirship

INTRODUCTION

Inheritance rights are one of the fundamental civil rights recognized and guaranteed by Vietnamese law. Within this, the forced heirship regime (or "the portion of the estate independent of the will's content") plays an important role in protecting the interests of close, vulnerable family members—those who may be disinherited or disadvantaged due to the testator's dispositive intent. Article 644 of the 2015 Civil Code stipulates that subjects such as spouses, parents, minor children, or adult children without labor capacity are entitled to at least two-thirds of a statutory inheritance share, even if excluded by the testator in the will.

However, in the current socio-economic context, where family structures, life expectancy, and forms of asset ownership are changing, the question arises: is the 2/3 mandatory inheritance share still appropriate for goals of fairness and social efficiency? Many countries with civil law systems similar to Vietnam, such as Germany, Japan, Switzerland, or France, have reformed their forced heirship regimes to balance freedom of asset disposition and protection of dependents. These changes reflect a trend toward reducing the state's rigid intervention in the testator's will, while still ensuring family welfare within reasonable limits.

Therefore, researching, analyzing, and comparing Vietnam's provisions with foreign legal systems is necessary to evaluate the reasonableness of the 2/3 ratio in practical application, while proposing directions to perfect inheritance law in line with Vietnam's development and international integration conditions.

RESEARCH RESULT AND DISCUSSION

Theoretical Foundations of Forced Heirship

Concept of Forced Heirship

In civil legal science, forced heirship (forced heirship or reserved portion) is understood as the portion of the estate that the testator is restricted by law from disposing of, to ensure the rights of certain heirs. According to Nguyễn Ngọc Điện (2019), this is a regime that "limits the freedom to dispose of property after death"—a typical manifestation of state intervention in civil relations to maintain family fairness and social stability (Dien, 2019).

The legal nature of forced heirship is a special inheritance right, established directly by imperative legal norms, independent of the testator's will. It embodies the dialectical relationship between individual free will and moral-social obligations. This mechanism stems from the conception that an individual's property is not absolutely personal but also tied to social responsibilities, especially

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toward dependent relatives (Dien, 2019). According to Trần Thị Huệ (2017), maintaining the mandatory estate portion is "necessary to protect the foundation of family ethics and avoid injustice due to abuse of testamentary rights (Hue, 2017)

In the European civil law tradition, particularly France, forced heirship (*réserve héréditaire*) is clearly stipulated in the French Civil Code (*Code civil*), as a portion of the estate that the testator cannot freely dispose of, reserved for children or surviving spouses (French Parliament, 2004). This concept later spread to many other civil law systems including Vietnam through the influence of 19th-century French codification thought.

Policy Basis of the Provision

From a public policy perspective, the forced heirship regime reflects a reconciliation between two fundamental principles of inheritance law: (i) freedom of estate disposition, and (ii) protection of dependents' interests. The first principle affirms the absolute ownership right of individuals over property—a right guaranteed by Article 32 of the 2013 Constitution and specified in Article 609 of the 2015 Civil Code. The second principle embodies the social function of inheritance law, ensuring fairness and humanity in family relations, especially for minors, the elderly, or those without labor capacity (Vietnam's National Assembly, 2013).

As Le Minh Hung (2022) analyzes, "modern inheritance law does not absolutize individual freedom, but places that freedom within the limits of social-family responsibility". Therefore, forced heirship is seen as a balancing mechanism between two value extremes: freedom and protection (Hung, 2022). In advanced legal systems, recent legislative trends involve narrowing the scope of protection and reducing the mandatory portion ratio, thereby expanding freedom of disposition. Switzerland's 2023 reform exemplifies this trend: the children's mandatory portion is reduced to 1/2, parents are excluded from mandatory heirs, and the testator is entitled to allocate the remaining portion according to their own will (Swiss Civil Code, 2023). This shift reflects a modern viewpoint: law intervenes only when there is actual dependency, rather than defaulting to protect all blood relations.

Overview of Provisions in Vietnam

In Vietnam's legal system, the forced heirship regime is stipulated in Article 644 of the 2015 Civil Code, with the following content: "The following persons shall still be entitled to a portion of the estate equal to two-thirds of the share of a statutory heir if they are not granted any portion of the estate by the testator or are granted a portion less than two-thirds of that share:

- (1) Minor children, fathers, mothers, spouses;
- (2) Adult children without labor capacity

From the above provision, three basic doctrinal features of this regime can be identified. First, regarding applicable subjects, the law protects only those with direct blood or marital relations who are economically vulnerable or lack self-sufficiency. Second, regarding the protection level, the mandatory portion is determined as two-thirds of a statutory inheritance share, not a fixed ratio of the total estate value as in French or Spanish law. This calculation reflects relativity, depending on the number of heirs in the first inheritance line. Third, regarding triggering conditions, the right to the mandatory portion applies only when the testator disinherits or allocates less than the stipulated amount.

Thus, this regime imposes a conditional limitation on freedom of disposition, protecting vulnerable groups without completely nullifying the testator's personal will. According to Nguyen Van Cuon (2021), this is "a humane social institution, reflecting a harmonizing mindset between traditional ethical standards and modern legal requirements (Cuong, 2021)

From a doctrinal perspective, it can be seen that current Vietnamese law maintains a higher protection level than the international average (2/3 compared to the common 1/2 in Europe). This aligns with Vietnam's social characteristics—where family structures and intergenerational support responsibilities remain central. However, in the long term, reevaluating the 2/3 ratio is necessary to ensure harmony between individual freedom and social responsibility—two core values of modern inheritance law.

Comparative Law in Some Countries

France - Réserve Héréditaire

In the French legal system, the *réserve héréditaire* regime is a characteristic pillar aimed at protecting the rights of close family members, especially children. Unlike systems granting broader dispositive rights to the testator, French law maintains a clear limit on the portion of property that can be freely disposed of after death. Specifically, according to Articles 913 and 914 of the French Civil Code (*Code civil*), if the testator has one child, the non-disposable portion of the estate (*réserve*) is one-half (1/2); if two children, it is two-thirds (2/3); and if three or more children, the mandatory portion increases to three-quarters (3/4) of the total estate (French Parliament, 2004). The remaining portion, called *quotité disponible*, is the only part that the testator can distribute at will, within the aforementioned limits.

The beneficiaries of the reserved portion include direct descendants (children, grandchildren) and, in the absence of descendants, the surviving spouse may also be protected under the separate provisions of Article 914-1 *Code civil* (Terré, Simler & Lequette, 2022). Unlike the monetary inheritance model common in countries like Germany, the rights of mandatory heirs in the French system are in-kind rights (*droit en nature*), allowing them to receive specific property from the estate mass rather than merely claiming an equivalent payment. This regime reflects France's deep legal tradition in protecting vertical family structures, i.e., intergenerational bonds. From a policy perspective, *réserve héréditaire* not only ensures basic economic needs for children after the parent's death but also embodies the ethical notion that one cannot be completely free in distributing property if it harms the essential

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interests of dependent relatives. The French system is considered one of the strongest protection models in Europe today, surpassing in mandatory ratios compared to countries like Germany (1/2 portion in money), Switzerland (1/2 portion from 2023), or Japan (1/2 or 1/3 depending on the case (OECD 2021).

However, this regime also faces much academic debate in the modern era. Some scholars argue that *réserve héréditaire* excessively limits individual freedom in property disposition, especially in the context of increasingly non-traditional family models and inconsistent parent-child bonds in terms of moral or economic obligations (De Vareilles-Sommières, 2020). Therefore, while maintaining this regime, France has gradually made minor amendments, such as expanding the right to agreements between parties through succession pacts (*pacte successoral*) in special cases (Article 968 et seq. Code civil).

Spain - Legítima

In the Spanish civil law system, the *legítima* regime is an important legal protection mechanism for mandatory heirs, especially children and spouses. According to Articles 806 et seq. of the Spanish Civil Code (*Código Civil*), *legítima* is "the portion of the estate that the law reserves for mandatory heirs, which the testator cannot dispose of at will" (Spain Parliament, 1889). When the testator has children, the entire estate mass is divided into three equal parts: the first third, called *legítima estricta* must be divided equally among all children under the principle of absolute equality; the next third is *mejora* the testator may prioritize it for one or several children; the remaining part is *tercio de libre disposición* the free disposition third, which can be left to anyone (including non-family members)

This is a legal design with a special combination of protection and flexibility. While *legítima estricta* ensures basic equality among children, *mejora* allows the testator to reflect specific equity factors such as care level, contributions, or individual needs of each child. The inheritance rights of mandatory heirs in Spain are real rights (*derecho real*), meaning they have the right to directly receive a portion of property from the estate, not merely a monetary compensation as in Germany (Ferrer Riba, 2017). For the spouse, if there are no children, they may become the primary heir, but if there are children, they are entitled to usufruct (*usufructo*) over one-third of the estate, usually on the *mejora* or *libre disposición* portion, depending on the specific situation (Carrasco Perera, 2019). This reflects the system's priority for direct blood relations over marital relations in protecting inheritance rights.

From a comparative perspective, Spain's *legítima* regime has many similarities with France's *réserve héréditaire* in maintaining a high mandatory estate ratio (total 2/3 of the estate), but it demonstrates greater flexibility through the *mejora* mechanism. This allows the testator to exercise a degree of "oriented freedom," not completely bound as in the French system where the reserved portion is mandatorily divided equally based on the number of children (OECD, 2021). In the context of European countries like Switzerland or Germany reforming to minimize mandatory inheritance constraints, the Spanish system continues to maintain a strong protection stance for traditional family values, especially parent-child bonds, which are seen as societal and civil ethical pillars in Spanish legal foundations.

Germany – Pflichtteil

In the German civil law system, the mandatory inheritance regime (*Pflichtteil*) is stipulated in §2303–2338 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), aimed at protecting certain close relatives from being completely excluded from the estate. Unlike systems granting in-kind inheritance rights in the estate, Germany's *Pflichtteil* only guarantees mandatory heirs a right to claim monetary compensation equivalent to one-half of the inheritance share they would have received under the law if there were no will (German Parliament, 2021)

According to §2303 BGB, those entitled to the mandatory portion include children, surviving spouses, and the testator's parents (if no children). For example, if the testator has one child and disinherits that child through a will, the child can still claim monetary compensation equal to 1/2 of what they would receive under statutory inheritance (Dauner-Lieb & Schubert, 2021) (e.g., if the statutory share is 100,000 euros, the *Pflichtteil* is 50,000 euros). Unlike the Spanish or French systems, *Pflichtteil* beneficiaries do not have the right to claim specific property from the estate (e.g., houses, shares, in-kind assets), but only the right to demand a corresponding monetary amount.

This mechanism creates a balance between the testator's freedom to dispose of property and protecting close family members from complete exclusion. However, unlike Spain or France where the mandatory estate portion occupies up to 2/3 or 3/4 of the total estate the German system limits this to 1/2 of the statutory share, while only guaranteeing a right to monetary claim rather than opening rights to specific property ownership. This is seen as a "minimal" form of protection in form but still preserves actual material value for the disinherited.

From a legislative policy perspective, the *Pflichtteil* mechanism reflects German legal philosophy, which emphasizes individual freedom in post-mortem property disposition, intervening only when disinheritance could cause serious harm to basic moral and family obligations. In practice, disputes over *Pflichtteil* payment obligations are very common and often require valuation of the entire estate to precisely determine the mandatory heir's claim rights (Gierl, 2020).

In the international context, Germany belongs to the group of countries with medium-level protection lower than France and Spain, but higher than common law systems like England, where no direct mandatory inheritance regime exists. To date, despite many reform proposals to minimize or make *Pflichtteil* more flexible, the system maintains the fixed 1/2 statutory share as a foundational balance between freedom of disposition and family obligations.

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Japan - Iryūbun

In the Japanese legal system, the mandatory inheritance regime is stipulated in Chapter V, Section II of the Japanese Civil Code (Minpō) and is called “Iryūbun,” meaning the portion of the estate that cannot be deprived from mandatory heirs. Unlike systems like France or Spain that divide the estate into fixed ratios, Japan designs a more flexible model, tied to the principle of division by inheritance lines and not applicable to all types of relatives. According to Article 1042 of the Japanese Civil Code, statutory heirs may claim protection of their rights through the iryūbun mechanism if they are disinherited through a will or receive less estate than guaranteed by law (Japanese National Assembly, 2020).

Specifically, the iryūbun portion is determined as follows: if the testator has children, the total mandatory portion is 1/2 of the total estate mass, divided among mandatory heirs according to statutory inheritance ratios. If the testator has no children but only surviving parents, the total mandatory portion is reduced to 1/3 (Yamamoto, 2019). This is a significant difference from many European civil law systems, where parents and children often have equivalent positions in mandatory inheritance lines. Moreover, siblings are not in the mandatory heir group under Japanese law and thus have no right to claim iryūbun.

An important feature of iryūbun is that this right does not automatically generate ownership rights to specific property that the mandatory heir will receive: this right must be actively exercised in the form of a claim to recover the estate portion, called “iryūbun shikkyū seikyū” i.e., the right to claim payment of the mandatory portion. In practice, this claim often leads to monetary payment obligations, similar to Germany's Pflichtteil model, rather than requiring in-kind division of the estate mass (Okuda, 2017).

From a legal policy perspective, Japan designs the iryūbun regime as a “minimum safety net” for the closest relatives (spouses, children, parents), while maintaining high freedom of disposition for the testator. This mechanism reflects the characteristic philosophy of modern Japanese law—combining individualism (freedom of will) and family obligations (filial piety). In academic debates, many Japanese scholars argue that maintaining the 1/2 level for children is reasonable in the context of changing social family structures and intergenerational financial expectations (Fujita, 2021). Compared to civil law systems like France (maximum protection up to 3/4 estate for children) or Spain (2/3), Japan's iryūbun protection level is medium and highly “variable,” not requiring in-kind payment. This approach is evaluated as suitable for Japan's socio-economic and family ethical context, where maintaining harmony in asset division is prioritized over rigidly protecting specific ownership rights.

Switzerland (2023 Amendment)

In the Swiss legal system, the mandatory estate portion (Pflichtteil in German; réserve légale in French) is stipulated in Articles 471–480 of the Swiss Civil Code (Zivilgesetzbuch – ZGB). From January 1, 2023, Switzerland officially implemented a major inheritance law reform, specifically narrowing the scope and ratio of mandatory inheritance to increase the testator's freedom of disposition.

Prior to the reform, the mandatory portion for children was 3/4 of the statutory inheritance share, parents received 1/2 if no children, and spouses also received some protection. However, under Article 471 ZGB as amended (effective from 01.01.2023), the children's mandatory portion is reduced to 1/2 of the statutory share, and parents are completely excluded from mandatory heirs. Only children and spouses remain protected subjects. This means that if the testator has elderly parents but no children, they no longer have an obligation to leave a portion of the estate to parents if there is a valid will (Zivilgesetzbuch, 1912).

The mandatory inheritance portion in Switzerland is not necessarily a right to receive specific in-kind assets from the estate mass; mandatory heirs may claim it in money or through asset division agreements. Disputes over the mandatory portion often arise if statutory heirs are disinherited or allocated less than the minimum, in which they have the right to sue to claim their mandatory portion.

The reform's goal is to adjust the inheritance system to better suit modern family structures where relationships like unmarried partners, stepchildren, or family business models become more common. According to the explanation from Switzerland's Federal Department of Justice and Police (EJPD), increasing freedom of disposition is necessary to ensure that the testator can support those truly dependent or attached to them in life, without being bound by traditional family norms that are no longer prevalent (Bundesamt für Justiz, 2020). Compared to other European countries, this reform brings Switzerland closer to medium-protection models like Germany (Pflichtteil at 1/2 statutory share) or Japan (iryūbun at 1/2 or 1/3 depending on subjects), and away from strong protection models like France (up to 3/4) or Spain (2/3).

Comparative Remarks

The provision in Article 644 of Vietnam's 2015 Civil Code establishes a minimum protection level for heirs without labor capacity or minors as “at least two-thirds of a statutory inheritance share” if disinherited or allocated less in the will. This reflects a strong forced heirship model, equivalent or superior to many other civil law systems currently in Europe and Asia.

Compared to France, where the réserve héréditaire fluctuates from 1/2 to 3/4 depending on the number of children (1 child → 1/2; 2 children → 2/3; ≥3 children → 3/4), Vietnam's protection level is equivalent or higher in most cases. However, a notable difference is that while French law requires equal division of the reserved portion among children, Vietnamese law protects only particularly vulnerable subjects, creating differentiation based on labor capacity, not absolute equality.

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Spain maintains a high protection ratio with a total of 2/3 estate for children (1/3 *legítima estricta*, 1/3 *mejora*), while the remaining is free disposition. However, unlike Vietnam, this system combines a flexible allocation mechanism (*mejora*) to reflect specific equity among children. This allows the testator to dispose in an oriented manner without violating the mandatory portion.

In contrast, countries like Germany, Japan, and Switzerland have lower protection trends. Germany guarantees only a monetary *Pflichtteil* equivalent to 1/2 statutory share. Japan stipulates *iryūbun* as 1/2 total estate if children exist, or 1/3 if only parents; and heirs must actively claim to receive their portion. Switzerland, after the 2023 reform, reduced the children's mandatory portion to 1/2 statutory share and completely excluded parents from mandatory heirs. This is a clear sign of modern legislative trends: shifting from rigid protection models to conditional or limited forced heirship to expand freedom of disposition, especially in the context of increasingly diverse and non-traditional family structures.

From the above comparison, it can be seen that the 2/3 statutory inheritance share that Vietnam applies is higher than the international average. While some countries like France and Spain still maintain high ratios to protect blood relations, most modern civil law countries have or are adjusting protection levels to 1/2 (Germany, Switzerland, Japan), ensuring humanity while creating reasonable space for the testator to express personal will. This raises a noteworthy question for Vietnam regarding the balance between protecting dependents and freedom of disposition—a topic with theoretical and practical significance in the civil law reform process.

Evaluation of Vietnam's Provisions

The provision in Article 644 of the Vietnam 2015 Civil Code establishes forced heirship for certain heirs independent of the testator's will. Accordingly, minors, adult children without labor capacity, parents, spouses of the testator are guaranteed at least two-thirds of a statutory inheritance share, even if disinherited or granted less under the will's content.

Advantages: This provision clearly demonstrates humanity by protecting the rights of vulnerable family members such as minor children, the elderly and frail, those without labor capacity, who often depend on the testator for finances or care. From a cultural-social perspective, this protection level also aligns with East Asian traditions that emphasize filial piety and intergenerational care obligations within the family (Dien, 2019). Additionally, establishing a minimum inheritance threshold contributes to maintaining internal family stability, minimizing post-death asset disputes (Thuy, 2021)

Limitations: Despite high protection, this provision raises certain issues in the modern socio-economic context. First, applying a rigid ratio (2/3 statutory share) without clearly distinguishing between truly dependent individuals (e.g., disabled children, elderly without income) and those still capable of labor may lead to unfairness or unreasonableness in actual estate division (Mau, 1962). Second, the provision does not design flexible mechanisms like "*Pflichtteil*" in German law where the mandatory portion is only a right to monetary claim rather than specific property receipt—which causes difficulties in enforcement for complex estates (German Parliament, 2021) (e.g., real estate, company shares, indivisible assets). Third, the current legal system has not expanded exemptions or waiver agreements for mandatory inheritance rights in special situations (e.g., family business transfers, social charity), which some developed countries have established in modern inheritance law (Hayton, Matthews & Mitchell, 2016)

Causes: These limitations partly stem from the influence of the French civil law model which emphasizes moral-social responsibilities among family members over individual dispositive rights. The provisions in Articles 913–914 of the French Civil Code on *réserve héréditaire* once served as a model for Vietnam's regulations when drafting the 1995 Civil Code and inherited in the 2015 Civil Code. On the other hand, Vietnamese legal thinking still focuses on social protection prioritizing minimum welfare assurance for vulnerable family members over granting maximum rights to individuals in will-making. This viewpoint is maintained as a balance between East Asian traditions and modern legal principles; however, in practice, it raises reform requirements to increase flexibility and suitability with current economic, social conditions and increasingly diverse family structures (Bien, 2022)

Proposals for Improvement

The forced heirship regime in Vietnamese law stipulated in Article 644 of the 2015 Civil Code plays an important role in ensuring fairness among family members, especially for those unable to protect their own rights. However, in the current socio-economic development context, this provision reveals certain limitations, requiring adjustments to both protect the vulnerable and expand individual freedom of disposition a core principle of modern civil law.

(1) Regarding the Forced Heirship Ratio

Currently, Vietnamese law sets a common guarantee level of at least 2/3 of a statutory inheritance share, applicable to all protected subjects, including: minor children, adult children without labor capacity, spouses, parents of the testator. This regulation has the advantage of ensuring equality among inheritance lines and clearly reflecting the state's humane policy. However, in practice, the 2/3 protection level is considered relatively high compared to international standards, potentially limiting the testator's freedom of disposition.

To harmonize these two principles, it is necessary to differentiate the forced heirship ratio based on actual dependency levels. Specifically, maintain the 2/3 level for truly vulnerable individuals, such as minor children, those without civil act capacity, or adult children without labor capacity. This is the group needing protection as they cannot ensure their own livelihood after the testator's death, while reflecting traditional values of filial piety and intergenerational care obligations in Vietnamese families.

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For those with economic self-sufficiency, such as elderly parents with pensions or spouses with stable income, maintaining the 2/3 ratio is not truly reasonable. In such cases, reduce the ratio to 1/2 statutory share, similar to provisions in many civil law countries like Germany (Bürgerliches Gesetzbuch - §2303) and Switzerland (Zivilgesetzbuch, Article 471 after 2023 reform). This approach maintains humanity while expanding the scope of freedom of disposition, aligning with international civil law reform trends.

(2) Regarding the Form of Implementing Forced Heirship

Current Vietnamese law does not clearly stipulate the form of implementing the mandatory inheritance portion. In judicial practice, most cases involve in-kind division, meaning mandatory heirs receive direct portions of property from the estate mass. However, this method causes difficulties when the estate consists of indivisible assets like housing, land use rights, or company shares. This not only prolongs dispute resolution but also affects the economic utility value of the property.

Therefore, add provisions allowing payment in money equivalent to the mandatory portion's value, instead of forcing in-kind division. This model has been effectively applied in German law with the Pflichtteil mechanism—mandatory heirs only have the right to claim monetary payment, not specific property. Similarly, the Japanese Civil Code (Article 1042) allows heirs to claim "mandatory portion payment" (Iryūbun shikkyū seikyū), facilitating flexible settlements among parties while ensuring minimum heir rights.

Adopting this mechanism in Vietnam would bring many practical benefits: reducing disputes over indivisible asset division, easing will execution, and suiting modern estate types (digital assets, shares, intellectual property rights). At the same time, it represents progress in modernizing civil law, toward flexible protection mechanisms that value agreements over coercion.

(3) Regarding Scope of Application

One existing issue with the current provision is that the scope of applying the mandatory inheritance portion is not clearly defined. According to Article 644 BLDS 2015, forced heirship is calculated from the "estate" of the testator, but does not specifically stipulate what this estate includes in terms of spousal common property or co-owned assets. This leads to many conflicts in judicial practice, especially in undivided common property inheritance cases.

To remedy, limit the forced heirship portion only within the scope of property under the testator's separate ownership. For common property, separate the surviving person's portion before determining forced heirship. This approach will unify with the principle of determining common-separate property in Articles 33 and 43 of the 2014 Marriage and Family Law (Vietnam's National Assembly, 2014).

Additionally, clearly stipulate methods for calculating inheritance shares when multiple inheritance lines coexist, such as when the testator has both elderly parents and minor children. In such cases, provide specific guidance on determining "shares" based on the first statutory inheritance line to ensure fairness and avoid arbitrariness in application.

(4) Regarding Overall Policy and Legislative Orientation

From a policy perspective, improving the forced heirship regime must be placed in the context of balancing social welfare and freedom of disposition. Countries following civil law traditions are trending toward reducing rigid protection ratios, expanding will freedom scopes, and encouraging family agreements. For example, Switzerland from 2023 reduced the children's mandatory portion to 1/2 and excluded parents from mandatory inheritance; France has allowed "succession contracts" (pacte successoral) since 2006, enabling family members to pre-agree on inheritance rights.

From that experience, Vietnam can orient in two directions:

Reduce the regime's rigidity by allowing the testator greater freedom in selecting beneficiaries, especially when mandatory heirs are no longer economically dependent.

Establish waiver agreement mechanisms for the mandatory portion, applicable in special cases like waiving rights for charitable purposes, cultural heritage preservation, or maintaining family businesses. This maintains ethical values while creating flexibility for the economy.

Finally, add estate valuation mechanisms and mandatory mediation before inheritance lawsuits, similar to procedures in Germany and Japan, to limit prolonged disputes.

Overall, these proposals do not change the humane nature of the forced heirship regime but aim to modernize and internationalize Vietnamese civil law, ensuring preservation of East Asian family law's "sentimental" traditions while integrating with principles of free will and fairness in a market economy.

CONCLUSION

The forced heirship regime in Vietnamese law, stipulated in Article 644 of the 2015 Civil Code, clearly reflects the humanistic orientation of the legal system in protecting the rights of vulnerable family members, especially minor children, those without civil act capacity, and those without labor capacity. The two-thirds statutory inheritance share guarantee embodies the traditional ethical value of "drinking water, remembering the source," emphasizing care and support obligations across generations a characteristic value of Vietnamese legal culture. However, in the context of strongly changing society and family structures, this provision reveals a lack of flexibility. The 2/3 level, though highly protective, may limit freedom of disposition the central principle of modern civil

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law. Especially when the testator wishes to use assets for charitable purposes, business investments, or for non-traditional heirs, the current provision does not create sufficient legal space.

Comparing with international trends, it can be seen that most civil law countries like Germany, Japan, or Switzerland have reduced mandatory inheritance ratios to about one-half statutory share, or narrowed protected subjects to enhance individual freedom of disposition, while maintaining minimum protection for truly dependent individuals. These reforms show a modern legislative trend: shifting from "rigid protection" to "conditional protection," suitable for market economy contexts and contemporary diverse family models. Therefore, reforming Vietnamese inheritance law in the coming period needs orientation toward combining traditional humanism and advanced legal system experiences. Specifically, maintain protection mechanisms for vulnerable groups with appropriate ratios, while reducing mandatory portions for other subjects to ensure freedom of disposition. Additionally, supplementing equivalent monetary receipt mechanisms, clarifying legal estate scopes, and encouraging family agreements will make this regime flexible, feasible, and suitable for practice.

In summary, the forced heirship regime needs to be viewed not only as a social protection tool but also as an institution balancing family moral obligations and individual freedom—a direction that Vietnamese law is aiming for in the process of perfecting a modern, integrated, and humanistic civil law system.

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