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USUFRUCT

ABSTRACT

This paper explains the institute of usufruct as a real right, which significantly restricts the rights of the owner of the usufruct object. In addition to this, the content of usufruct will also be discussed, more specifically the fundamental rights and obligations of the usufructuary. Moreover, this paper will also discuss the creation of the usufruct, its protection and ending. A particular overview will be devoted to the legal position of aforementioned entities and the restriction in using the object of usufruct. The rights and obligations of the usufructuary and its owner are regulated in detail by the Law on Property and Other Real Rights in Kosovo, and are analyzed in comparative level, by drawing comparisons with other legal systems of different countries.

This paper proves that the absolute nature of the property right is however subject to restrictions while there is a legal relationship or agreement of usufruct, of which the owner of the property is liable to collect, so as to allow the usufructuary to peacefully exercise its right who ultimately is also liable to adhere to the manner of use as determined by the law and in particular, while special care shall be given to preserving the substance of the property and its economic destination.

Key words: personal servitude, usufruct, the owner of the asset, usufructuary, using the asset, fruits, rights and obligations, limited real right.

Introduction

According to the legislation in Kosovo, the usufruct, as one of the most important personal servitude, is regulated with the provisions of Law on Property and Other Real Rights (Article 218-251).⁷⁴

⁷⁴ Official Gazette of the Republic of Kosovo nr.57/04, 2009.

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The usufruct, is a time limited use of an asset and its collection, without damaging the substance of the asset and its economic destination. As a real right of the broader use of someone else's asset, the usufruct represents the most important personal servitude.

As any other subjective right, the usufruct consists of the rights and obligations for the subjects or entities that enter into a legal agreement in order to establish it. The content of the usufruct is part of absolute subjective rights group and as such, it applies *erga omnes*, i.e to all third persons including the holder of good at service. However, unlike third persons, whose actions are negative, relative relations of the subjective rights are established between the holder of the right and the usufructuary. Since into the relationship between the holder of good at service and the usufructuary, the usufruct has dual action effect, the usufruct contains elements of the subjective rights with the absolute and relative nature.⁷⁵ With regard to the content the usufruct is similar to the obligations (for example: rent), while with regard to its application, the usufruct is a real right. An object of the usufruct can be assets or rights.

A usufruct can be established under a contract or a judicial decision.⁷⁶

Under the contract, the usufruct can be established in a manner that the holder of the right of serving, retains the right of property over the asset while it transfers the right of usufruct to the usufructuary, or, retains the right of usufruct while it transfers the right of property.

Under a judicial decision, the usufruct can be established when all the legal facts set forth by the law are made relevant. This can be best illustrated by the fact that if we refer the Law on Inheritance in Kosovo, article 63.2, which provides: "If the usufruct... has been contracted to the assignor and his spouse together, in case of death of any of them, the usufruct... the entire usufruct belongs to the other party until his death, unless it results otherwise from the agreement, or from the circumstances" so it can be inferred that in order to exercise the right of usufruct, the legal facts have been proven.

According to the article 223 of Civil Code of Albania, the usufruct can be established also with adverse possession. Also the Albanian Civil Code in article 236 has foreseen the joint-usufruct, according to which a usufruct could exist in favor of more than one person. When the right belonging to one of them ceases to exist, it transfers in proportions to the usufructuary that are left.

An immovable or a movable asset can be encumbered in a way that the person (user) in whose benefit the asset was encumbered has the right to use and reap all the benefits of the item, without impairing the substance.⁷⁷

The usufructuary cannot use the essence of the asset nor legally nor factually.⁷⁸ Furthermore, it cannot use legally the essence of the asset since the usufruct is a personal servitude and is bound

⁷⁵ D.Stojanovic-O.Antic, uvod u gradjansko pravo, Beograd, 2004, 204

⁷⁶ Law on Property and Other Real Rights of the Republic of Kosovo, article 220.

⁷⁷ Law on Property and Other Real Rights of the Republic in Kosovo, article 218.

⁷⁸ Gams,Andrea , The Basics of the Real Rights Belgrade, 1966,page.151

to the subjectivity of the usufruct holder while factually the usufructuary must keep the essence of the asset by not changing its composition nor its economic destination.⁷⁹

1. The legal position of usufructuary

1.1. The rights of usufructuary

The usufructuary has the right to use the asset pertaining to another person, by respecting its economic destination and by preserving its substance, while the owner of the asset has to endure such use. The Law on Property and Other Real Rights stipulates: “Movable and immovable property can be encumbered in such way that a person for whose benefit the encumbrance is made is entitled to use and encumber the property (usufruct) provided the substance of the property remains unimpaired”⁸⁰

Furthermore, the Law on Property and Other Real Rights article 224 stipulates the following: The usufructuary is entitled to possession of the movable property encumbered by the usufruct. Thus, as it can be understood from this legal provision, one of the most fundamental rights of the usufructuary is the right to possess the asset encumbered with usufruct. Also, while referring to the legal wording of the provision found in article 218 of Law on Property and Other Real Rights, it is clear that the usufructuary has the right to use and collect all the benefits of the asset.

1.1.1 The right to take the asset into possession

The usufructuary is authorized to possess the asset.⁸¹ In principle, the usufructuary has lawful possession, independent and exclusive. Whereas the possibility to contract a possession of intermediate and joint possession exist only when with this kind of possession the purpose of right of use and fruit collect is achieved.⁸²

The right to possess the asset means that the usufructuary is immediately establishing a relationship with the asset, with the purpose to use, administer, and benefit its fruits, without having the need for an action from the owner or anybody else who is already divested from its rights of use. This represents an essential quality of the usufruct.

The owner is obliged to hand over the asset to the usufructuary and if he does not do this voluntarily then the usufructuary has the right to sue the owner in order to obtain the asset.⁸³ In case the usufructuary and the owner in their agreement have not foreseen the obligation to hand over or deliver

⁷⁹ Aliu, A, cited book, page. 168

⁸⁰ Law on Property and Other Real Rights of the Republic in Kosovo, article 218.

⁸¹ German Civil Code, article 1036

⁸² Kovacevic, Nemanja, The content of the usufruct right in the Serbian law “Glasnik Prava” Kragujevac, 2013 fq. 121.

⁸³ Law on Property and Other Real Rights, article 232.

the asset in good conditions, then the usufructuary shall not have the right to refuse accept the asset because of non-conformity. If the usufructuary misuses its right, then the court can deprive him from the right to administer the asset. The word itself usufruct, entails two essential elements: Usus – the right to use the asset and Fructus the right to collect its benefits. These two elements give meaning to the usufruct, known with this name. Almost all legal regulations with contemporary civil law establish the usufruct right based in these two essential elements, on which stand the rights of usufructuary, for example the CCF, the CCA etc.⁸⁴ It is essential to preserve the substance of the asset that is object of the usufruct, regardless of the volume of authorization that the holder of the right of usufruct has in using the asset belonging to someone else. This is very easy to be understood based on the definitions provided for the usufruct. This increases the need for the asset to be non-exhaustive.

1.1.2 The right to use the asset

The right of use exercised from the usufructuary is a general right, which is undefined and the law makes a negative definition, thus obliging the usufructuary in preserving the substance of the asset.
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The usufructuary has the authorization to use the asset but does not have the right to change its economic destination without the prior consent of the owner. The right of use means the right to collect its fruits or benefits. The usufructuary has the right to gather the fruits (either natural or civil) that the asset produces during the time of usufruct. The usufructuary has the right to use the asset into usufruct which means that the usufructuary has the right to use the usufruct same as the owner. The usufructuary has the right to use the servitudes⁸⁶ that are related to the property upon which has the right of usufruct and to exercise other real rights that can be exercised by the owner as well, except cases when restrictions are stipulated according to the contract for establishing the usufruct, or according to the law. The usufructuary has the right to use the real servitude in the immovable asset in which it has established a usufruct, regardless of the fact of that real servitude was constituted before or after the established of the usufruct.⁸⁷ In a way the usufructuary is obliged to use the real servitudes, in order to preserve the right to use them, so to avoid and statute of limitation for this right which comes as a result of not exercising the right.⁸⁸ The usufructuary cannot establish new real servitude in the asset which is encumbered with the right of usufruct, but he can allow the third person to use the asset that is object of the usufruct, according to the legal relations of obligations.⁸⁹

⁸⁴ CCF Article 5977, CCA Article 849, al.1

⁸⁵ CCA, article 237.

⁸⁶ CCA, article 245.

⁸⁷ Stankovic, Obren & Orlic, Miodrag, Stvarno pravo, deveto izdanje, Beograd, 1996, fq.221.

⁸⁸ Stankovic, Obren & Orlic, Miodrag, vepra e cituar., fq.221.

⁸⁹ Right there

With regard to the right of using the asset that is object of the usufruct, many authors consider that the usufructuary has the right to reach that level of being the owner of the asset. But, regardless of all, it is essential in this case that the asset is used as per its economic destination by preserving its substance. At the end, preserving the substance of the asset is a precondition in establishing the usufruct. The foundation of usufruct itself is bound to collecting the fruits or benefits from an asset that is somebody else's property and it is essential to the legal relationship of the usufruct. The usufructuary has the right to gather the fruits or benefits, either natural or civil. He has the right to use these fruits without any disturbance. He has the right to sell them. The usufructuary has the right to transfer the right of collecting the fruits or benefits to another person. The usufructuary has the right to request an inventarization with the purpose of assessing the condition of the asset. If the inventarization of the asset has not been performed in the beginning, it is considered that the asset has been in an average condition.⁹⁰ Whereas according to the KCS, the expenditures of inventarization are carried out by both parties, regardless of who requested the inventarization.⁹¹ Whereas the KCGJ stipulates that the expenditures with regard to inventarization can be carried out by the party that has request it in the first place.⁹²

1.1.3 The right to transfer the usufruct

In case the usufructuary is a natural person, then he cannot transfer the usufruct. An asset encumbered with the usufruct can be transferred to another person to exercise the right of usufruct.⁹³ Namely the usufructuary who is a natural person can transfer to another person only the right of exercising the usufruct but not the right upon the usufruct. When a third person exercises the rights deriving from the usufruct which lasts within the time limit set for the use of the usufruct, by the death of first usufructuary the rights deriving from the usufruct ceases to exist.

Whereas with regard to transferring the right of using the usufruct to another person, the Civil Code of Albania as foreseen a different situation from our law on property and other real rights.

According to CCA: "The usufructuary can transfer to another this right for a certain period or for all time it is on, except when in the establishment act it is differently foreseen. The transfer must be writtenly announced to owner, otherwise the former usufructuary and the person who has acquired such a right are solidary responsible to the owner."

When we are dealing with the transfer right of the usufruct, and when the usufructuary is a legal entity the Law on Property and Other Real Rights of Kosovo has foreseen this solution:

"If a usufruct is held by a legal person or a partnership with legal personality, the usufruct is transferred if the assets of the legal person or the partnership are assigned to another person by

⁹⁰ Statovci,E. The Servitude Right, 2009, page.294 cited as KC PA par.513.

⁹¹ CCS, Article 763

⁹² CCG, Article 1034

⁹³ Law on Property and Other Real Rights of Kosovo, Article 219

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way of universal succession. If a business or part of a business operated by a legal person is transferred to another person, a usufruct may be transferred to the acquirer if the usufruct is considered beneficial for the purposes of operating the business or a part thereof.”

The CCA foresees the possibility to transfer the right of the usufruct for a limited period of time, or for the whole time while the usufruct is set to exist, unless it has been regulated otherwise with the establishing act.

Transferring the right of usufruct to another person should be announced to the owner, otherwise the usufructuary and the person who gained the right of usufruct shall be jointly responsible to the owner.⁹⁴

According to the CCA the usufructuary has the right to transfer the right of the usufruct to another person or to alienate it at the extent allowed for the alienation. He also has the right to rent the asset and the right to use the servitude and other real rights.⁹⁵

Fruits or benefits are assets that are periodically produced by the main asset. Whereas the German law divides the fruits into assets fruits and fruits deriving from the right, thus in a direct and indirect way.⁹⁶ The usufructuary of a corporal asset has the authorization to collect the natural fruits and the civil fruits as well, and all other benefits deriving from the right of use of that asset.⁹⁷

The usufructuary has the right to possess the asset encumbered with the usufruct.⁹⁸

The usufructuary has the right to collect the natural fruits provided by the good at service, without reducing its substance and without interfering with the legal provision and common practice. Civil fruits, that the assets provides based on a legal act, belong to the usufructuary during the whole time that the usufruct actually exists. Civil fruits that are created after the usufruct ceased to exist belong to the owner of the asset. Natural fruits are considered to be all those fruits that are produced by the land, or as an outcome of a man’s work and also animal products.

Natural fruits are also considered to be sand, rock, gravel, etc. If the usufructuary and the owner of the asset have not drafted a record in form of document with regard to the condition or conformity of the good at service, then it is considered that the usufructuary has received the good at service in an average condition of use, with at the qualities for a regular use by the usufructuary. The usufructuary covers the expenses for regular maintenance of the good at service.

The usufructuary or the owner may request that the instrument (security) and the renewal certificate be deposited at a depository institution with the stipulation that delivery may be requested only by the usufructuary and the owner jointly.⁹⁹ Thus according to this the authorization

⁹⁴ CCA, article 240

⁹⁵ CCA, article 240-241

⁹⁶ CCG, article 962

⁹⁷ CCG, article 1030

⁹⁸ Law on Property and Other Real Rights of Kosovo , article 224

⁹⁹ Law on Property and Other Real Rights of Kosovo, article 246. Par.2

to return the instrument (security) or the renewal certificate pertains to usufructuary and to the owner of the asset that is the object of usufruct, and only upon the condition of them acting jointly. The owner of the asset may denounce the usufruct. The denouncement may be made when the usufructuary fails to provide the required safety from the owner and when there is a serious threat jeopardizing his rights, especially when dealing with the right to maintain the asset or require it back. If the denouncement of the usufruct is valid, the usufructuary retain his right for proper compensation for the non-collected benefits.

CCA stipulates: The usufructuary receives the assets in the conditions they are before the usufruct. Assets of the usufruct are received in delivery by inventory done with a notarial act or with the verification by notary, in the presence of owner, after he was announced in an appropriate term. It is the right of parties that in inventory must be noted all details which are related to the definition and condition of thing taken in usufruct.

The inventory can be done by a private act also, when two parties are in agreement and are present during its performance. The expenses for the performance of inventory are on the charge of usufructuary, except when it is differently foreseen in the establishment act.¹⁰⁰

When dealing with the usufruct in an enterprise, then the usufruct shall be registered in the register of the rights of immovable property. The usufructuary has the right to use and take action with all the properties of the enterprise and to become a beneficiary of all the rights that the enterprise has towards third persons, unless the usufruct provider and the usufructuary have agreed otherwise.

The Law of Kosovo on Expropriation stipulates the following:

“If, as a result of an expropriation, a personal servitude, construction right, right of preemption, usufruct or right of use on or to the expropriated property is terminated, the Final Decision shall require the Expropriating Authority to pay reasonable compensation, as determined by the Office of Property Valuation, to the Persons who have been damaged by the loss of such servitude or right. Unless an applicable and lawfully awarded contract provides otherwise, the Expropriating Authority may order the Applicant or anticipated Beneficiary – if any – to pay such compensation.”¹⁰¹ Even when we are dealing with property expropriation executed for the benefit of public interest, the lawmaker has foreseen the possibility of compensation for the holder of the right of the personal servitude – the usufruct.

2. The obligations of usufructuary

The usufructuary must provide for the maintenance of the property in order for its substance to remain unimpaired.¹⁰² The usufructuary is obliged to preserve the substance of the asset, but he

¹⁰⁰ CCA, Article 247

¹⁰¹ Law of Kosovo on Expropriation, article 18

¹⁰² Law on Property and Other Real Rights of Kosovo article 18

cannot be held responsible for the diminished value which comes as result of its regular use.¹⁰³ The usufructuary is not obligated to carry out extraordinary repairs and renovations, but must permit the owner to undertake such repairs or renovations.¹⁰⁴ The usufructuary is obligated to carry out repairs and renovations only to the extent that these are part of the normal maintenance of the property.¹⁰⁵ Whereas the owner is responsible to cover the expenses which come as a result of asset amortization, force majeure or coincidence.¹⁰⁶ While in the Croatian legal system there is no obligation foreseen for the usufructuary to provide the owner with relevant safety measures with regard to the substance of the asset.¹⁰⁷ In contrary to this, the CCG stipulates that the usufructuary is not obliged to insure the owner as specified above.¹⁰⁸ Even the CCA foresees the obligation of the usufructuary to insure with regard to fulfilling its obligations deriving from the usufruct.¹⁰⁹ In addition, the usufructuary has the obligation to notify the owner immediately after damage or deterioration has been caused to the asset or if there is a necessity for extraordinary repair of the asset due to an unforeseeable danger. Notice shall be made in the same way with regard even for the claims of a third person on the usufruct.¹¹⁰ CCG in the meanwhile foresees the obligation of the usufructuary to notify the owner of the asset that has been damaged or deteriorated, for any extraordinary repair or possible renovation of the asset or for any preventive measures to protect the asset from unforeseeable danger. The usufructuary must notify the owner without any unreasonable delay. In the same way the usufructuary notifies the owner about the claims of a third person toward the asset.¹¹¹

For the duration of the usufruct, the usufructuary is obligated to pay all ordinary public charges due for the asset, such as taxes and fees. The usufructuary is further obligated to pay private charges that were levied on the property as of the date the usufruct was created, in particular interest on a mortgage and land charges.¹¹²

If after the termination of the usufruct, the asset is not in the same condition as the one in which the usufructuary received it, he is accountable to the owner for the diminished value, regardless of the cause; however, he is not held accountable for the diminished value because of age or regular wear and tear that could not be avoided or remedied by full performance of the duties referred to.

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¹⁰³ Stankovic, Obren & Orlic, Miodrag, cited book, page .221.

¹⁰⁴ Law on Property and Other Real Rights of Kosovo article 226, par.3

¹⁰⁵ Law on Property and Other Real Rights of Kosovo article 226, par. 2

¹⁰⁶ Stankovic, Obren & Orlic, Miodrag, cited book, page.221.

¹⁰⁷ Zakon o vlasnistvo i drugim stvarnim pravima Republike Hrvatske, NN91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114.01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, neni 209 par.1.

¹⁰⁸ CCG, article 505.

¹⁰⁹ CCA, article 252.

¹¹⁰ Law on Property and Other Real Rights of Kosovo article 228

¹¹¹ CCG article 1042, Stankovic, Obren & Orlic, Miodrag, cited book,, page.221-222.

¹¹² Law on Property and Other Real Rights of Kosovo, article 229.

¹¹³ The law of Croatia on Property and Other Real Rights, Article 210,

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The usufructuary is obliged to pay for the value of the lost or damaged asset even though if this was not because of his fault. The Law on Property and Other Real Rights of Kosovo obliged the usufructuary to maintain the asset, as follows: “The usufructuary must provide for the maintenance of the property in order for its substance to remain unimpaired.”¹¹⁴

The usufructuary must provide maintenance of the property by taking all the measures in order for to preserve it from being destroyed. The usufructuary is obligated to carry out repairs and renovations only to the extent that these are part of the normal maintenance of the property. The usufructuary is not obligated to carry out extraordinary repairs and renovations, but must permit the owner to undertake such repairs or renovations.¹¹⁵

If the property is destroyed or damaged or if an extraordinary repair or renovation or a precautionary measure for protection of the property against unforeseen hazards becomes necessary, the usufructuary must notify the owner without undue delay.¹¹⁶

The rights of the usufructuary are not equal with the rights of the owner, since as it is specified above the usufructuary is obliged to preserve the substance of the asset. Whereas, respecting the asset economic destination, is not an obligation of usufructuary towards the owner, but a restriction in using the usufruct. Thus, this means that the usufructuary has the right to use the asset only in a manner stipulated without impairing its substance or altering its economic destination. If he fails to respect this, he violates the property right, and it does not fail to fulfill its obligation related to the usufruct. At this point, we are not dealing only with violation of the authorizations that have been primarily specified, but at the same time we are dealing with misuse of usufruct. Therefore, such actions of usufructuary which fail to respect the economic destination of the asset cannot be deemed to be legal toward third parties either.¹¹⁷

When there is a demand to preserve the economic destination of an asset, then it should be specified clearly the notion of economic destination. This is because an asset can be suitable for many functions. Thus a building can be serve for residence, office, store, and this due to the fact that many factors determine it economic destination of such asset. This factors or circumstances could be: the environment where the asset is located, the social position of the owner, or other circumstances present at the moment when the economic destination of the asset is being determined. However it is important to point out that it must be taken into consideration the economic destination of the asset at the moment when the usufruct was established.

At the time the usufruct end, the usufructuary must return the enterprise and all its assets to the owner. In addition, if the value of all current assets returned to the owner is lower that their value

¹¹⁴ Law on Property and Other Real Rights of Kosovo , article 226

¹¹⁵ Right there,

¹¹⁶ Law on Property and Other Real Rights of Kosovo, article 228

¹¹⁷ Law on Property and Other Real Rights of Kosovo, article 228

at the time of the creation of the usufruct, the usufructuary must compensate the owner accordingly.¹¹⁸

3. Legal position of the owner

3.1 The rights of the owner

The property right is a subjective right of the absolute nature. Therefore this gives right to the owner to use its asset accordingly to his will, but upon the condition that he must not violate the usufruct rights. The owner has the right to freely use the asset that is usufruct object, to alter it without any restrictions, to give it away, to bequeath it, to establish a real servitude and to use it to the extent that it does not violet the rights of the usufructuary. While in the immovable property the owner can establish the usufruct.

In addition the owner has the right to require from to court to set a preliminary injunction in relation to the usufruct, as per the conditions set forth in order to avoid any other option from the usufructuary in fulfilling its insurance obligations. In case the court refuses such request, the right of the owner to require forceful enforcement from the court is presumed.¹¹⁹

A found treasury belongs to the owner, not to the usufructuary. In case the usufructuary uses the asset in an unauthorized manner, the owner may issue a warning to the usufructuary. If the usufructuary continues the unauthorized use notwithstanding that a warning was issued, the owner may seek an injunction against the usufructuary prohibiting the unauthorized use.¹²⁰

If a claim for a particular asset falls due which arose before the usufruct in the owner's assets was created, the owner may require the usufructuary to return the asset that is necessary to satisfy the creditor's claim.

3.1 Obligations of the owner

In additions to the rights, the owner has also obligations to meet, thus he is obliged to make it possible to the usufructuary to exercise his right. Handover or deliver the asset to the usufructuary, while the asset must be in good condition. The owner is obliged to cover extraordinary expenses (repair the roof and other similar and conditional damages) and other extraordinary hauls related to the asset. Extraordinary hauls are considered to be: expenses related to the demarcation between neighbor owners, another expenses on reparation in building wall or maintaining yards.¹²¹The owner has the right to sue the usufructuary in order to protect his right.

¹¹⁸ Law on Property and Other Real Rights of Kosovo, article 251

¹¹⁹ Law on Property and Other Real Rights of Montenegro, article 239.

¹²⁰ Law on Property and Other Real Rights of Kosovo, article 231, par. 2

¹²¹ Statovci ,E. The Servitude Right, 2009, page.295

4. *Protecting the right of the usufruct*

If the right of the usufructuary is violated, then the usufructuary has the same rights as the owner does. Depending on the damage, the holder of the right of the usufruct can submit:

- 1) Claim against the obstruction of possession
- 2) Claim to verify or confirm the existence of a servitude
- 3) Actio confessoria (confessing claim)¹²²

The principal claim through which the usufructuary protects its right is the confessing claim (action confessoria), and in addition he has the right to submit a claim for possession.

The confessing claim the claimant can testify:

- a. The existence of his right
- b. The respondents obstruction act ¹²³

In the Roman law the servitudes as a real right are protected with *action in rem*, whereas in the Justinian era the claim to protect the servitude was known as action confessoria. Primarily this belonged to the holder of the right of the usufruct, against the owner of the good at service, and latter actio confessoria was allowed also to be submitted against third parties that obstructed the usufructuary in exercising its right of the servitude. Actio confessoria is same as vindication servitutis, through which the claimant pretends he is entitled the usufruct. The claimant must verify that he is entitled the right of the usufruct, and he also must verify the action of the respondent by which he obstructs the right of using the usufruct,¹²⁴ whereas in this case the respondent will be forced to accept the right of the usufructuary upon the servitude (usufruct) and to make possible to the claimant to exercise without any obstruction its right of usufruct, and the compensation for the damage caused, including the termination of any further obstruction.

Actio confessoria is similar to actio negatoria. With action negatoria the owner is protected against any other third party who is obstructing him, since he embraced the right of the servitude. Actio confessoria is submitted by the holder of the right of the usufruct against the owner of the asset and against third parties in order ensure the recognition of his right upon the usufruct.¹²⁵ Actio confessoria has been made available also to the deputy holder of the right of the servitude, and this is the person who is competent to testify the legal basis and other true ways of gaining the right of the servitude before a competent court. In case the right of the servitude is damaged with a null decision in the land registration books, the holder of the right has at his disposal ‘erasure claim’.¹²⁶ In this case the usufructuary is an active legitimate, the right of who has been violated, while all the others, even the owner of the right, who obstruct the usufructuary to exercise his right

¹²² Gavela, N. Stvarno Pravo Zagreb 2008, page.100

¹²³ Right there,

¹²⁴ Right there,

¹²⁵ Klarič, Vedriš, Stvarno pravo, Zagreb 2008, fq.25

¹²⁶ Klarič, Vedriš, Stvarno pravo, Zagreb 2008, fq.25

upon the usufruct are passive legitimates.¹²⁷ With the confessing claim the return of the asset is required, which has been taken by the claimant (*restitutio in integrum*) or in addition to that what could also be required is the termination of further obstruction in exercising the right of the usufruct. The statute of limitation for this claim is twenty years, starting from for the moment the holder of the right when the holder of the right was denied the right to or obstructed in possessing such right.¹²⁸ Comparative law foresees that the usufructuary could raise any real right claim, against the owner or against third parties. According to the CCG the usufruct is protected in the same way as it is protected the property right¹²⁹, such as: petition claim which corresponds with the *rei vindicatio* claim and *actio negatoria* and other real rights claim. The same solution has been incorporated in the Law of Property and Other Real Rights of Kosovo: “The usufructuary is entitled to the same rights as the owner against any third party interference with the usufruct”.¹³⁰

The French law meanwhile the usufruct right is protected with the confessing claim o the usufruct and with the possessing claim.¹³¹

In terms of forcefully exercising of the right and the competence of the court: the Law on Enforcement Procedure, stipulates the following: To decide about the proposal for execution for the usufruct, or any other similar property right of debtor and for application of application of this execution, of territorial jurisdiction is the court in territory of which is situated the residence of execution debtor, and if execution does not have residence in Kosovo, competent is the court in territory of which is his place of stay. When the debtor is a legal entity, of territorial jurisdiction is the court in territory of which is situated the headquarters of the legal entity, and in the debtor has no headquarters in Kosovo, competent is the court where in territory of which the legal entity is situated.¹³²

5. *End of the usufruct*

The usufruct as a legal relation, is established, altered and ended upon the fulfillment of certain legal circumstances which the law recognizes. The usufruct is ended when the time set forth for its existence has passed, but before the usufructuary's death. If by the time of death of the usufructuary the usufruct contracted period has not ended yet, or it has not been contracted at all, the right of the usufruct at that point is ended as a personal servitude upon the usufructuary's death while the owner will retain back is right to the asset, who until then was unvested from the property rights. The ending of the usufruct as a legal relation happens upon its fulfillment and by waiving the right upon the usufruct.

¹²⁷ Statovci, E. E Drejta e Servituteve Prishtine 2009 ,fq 300

¹²⁸ Gavela, N. Stvarno Pravo Zagreb 2008 , fq.100

¹²⁹ CCG, Article 1056

¹³⁰ Law on Property and Other Real Rights, article 232

¹³¹ Statovci, E. E Drejta e Servituteve, Prishtine 2009, fq 301 cituar Planiol-Ripert 665, Yiannopoulos 226.

¹³² Law on Enforcement Procedure in Kosovo, article 175

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The usufruct can be ended upon the contract reached by the owner of the asset and the usufructuary (this agreement could be with or without compensation) and also with the usufructuary denouncement.¹³³ The validity of the denouncement is considered as one sided legal act, and the consent of the owner of this asset which is usufruct object is not required, however the usufructuary creditors could require the annulment of the denouncement which has been exercised against their interests. The interest of the usufructuary to waive its right from the usufruct, comes as a result of non-profitability of the asset which at one point becomes a burden for him.¹³⁴ Legal facts that are recognized by the law e which lead to the termination of the usufruct are different. The Law on Property and Other Real Rights of Kosovo stipulates the following, with regard to the ending of the usufruct:

- a. with the death of the usufructuary, if the usufructuary is natural person.
- b. in the case that the usufructuary is a legal entity with its termination.¹³⁵
- c. a usufruct in immovable property terminates when the usufructuary gives the owner a notice of termination and the termination is registered into the immovable property rights register.
- d. a usufruct in movable property terminates when the usufructuary declares to the owner that the usufruct is abandoned.¹³⁶

The CCA foresees the following ways of ending the usufruct right:

- by the death of usufructuary or cessation of usufructuary legal entity;
- by the unification of qualities of owner and usufructuary in a sole person ;
- by the complete destruction or the loss of thing given in usufruct;
- by non-usage of usufruct continuously for twenty years

The death of the usufructuary is the most natural way to end the usufruct. This way of ending the usufruct is common for all the legal systems.¹³⁷ The right of the usufruct is a subject right belonging to one specific person. It lasts until the usufructuary is dead, and by his death the right of the usufruct ends.

Some civil codes¹³⁸ do not allow for the usufruct right to be transferred to the usufructuary's successors after his death. While, in terms of ending the right of the usufruct when the legal entities have the capacity of the usufructuary, it ends upon the termination of the legal entity.¹³⁹

¹³³ CCF, Article 621, 622, CCG article 1064, CCS a.12, article 748

¹³⁴ Stanković, O. & Orlić, M. *Stvarno Pravo*, naučna Knjiga, Beograd, 1981, fq. 341

¹³⁵ Law on Property and Other Real Rights of Kosovo, article 235.

¹³⁶ Law on Property and Other Real Rights of Kosovo, article 236.

¹³⁷ Law on Property and Other Real Rights of Kosovo, CCA 235, article 225 par.1, CCG article 1061, CCF article 617, Croatian Law on Property and Other Real Rights article 201.

¹³⁸ CCG article 1061, CCF article 617

¹³⁹ Law on Property and Other Real Rights of Kosovo, article a235, par.2, CCA article 255, CCG article 1061

In other civil codes the usufruct right has a timeline of thirty years,¹⁴⁰ from the day he usufruct right commenced.

Another way of ending the usufruct right is expiration of the contracted time. In principle the usufruct end with the death of the usufructuary however parties have the opportunity to set the duration of the usufruct themselves.

The usufruct can also end by not exercising this right from the usufructuary. If the usufructuary does not exercise this right for a considerable time period (does no live in the house of apartment upon which he has the right of the usufruct), the owner has the right to require through a judicial decision to be verified that the right of the usufruct has been terminated. The usufruct can end also by destruction of the asset. The usufruct ends under the conditions stipulated by the law.

6. Conclusion

The elaboration we made for the usufruct as a legal institute pertaining to the real rights, it was clear that the usufruct represents one of the most important personal servitude. As the most relevant personal servitude, the usufruct is a complex institute of the real rights law, since its legal nature is quite complicated, which entails the substantial rights of the owner of the asset and for this reason the lawmaker has paid special attention by regulating it in a detailed manner through specifying the rights and obligations of the usufructuary and the owner of the asset.

In the comparative law the institute of the usufruct represents one of the most relevant personal servitudes, and it pays particular attention its legal regulation. This has been also a characteristic of our legal system, for the mere fact that in the considerable amount the rights of the owner of the asset that is object of the usufruct have been affected.

From what has been established in this paper, the usufruct could be created only in the manners specified by the law, while preserving its substance and not altering its economic destination of the usufruct object, where basic preconditions establishing this institution and respecting them is indispensable.

In addition, it was established that throughout the duration of the usufruct, the usufructuary besides having rights, has the obligation to preserve the usufruct asset with responsibility and to notify the owner when there is danger threatening the usufruct object, and at the same time require from the owner to undertake all necessary interventions.

Since after the end of the conflict in our country there has been load of transactions with immovable property, the court should be careful when rendering decision on the merits of property cases, by taking particular care in not violating other real rights pertaining to their holder, including those of the usufructuary.

¹⁴⁰ CCF, article 619

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