

The Right of Pledge on Movable Items (Pignus) in Republic of Kosovo

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Abstract

The pledge is an item right based on which its official holder – the pledgee may seek the payment of his/her claims from the item if those aren't paid within certain time limit. The right of pledge in the Republic of Kosovo constitutes a complex occurrence which has various relations on which at one side is the pledgee creditor, and in the other side are debtor pledgor and other third persons. The role of pledge and its affirmation is related to most qualitative changes of claims. The right of pledge as item right in foreign item (*iura in re aliena*) makes a history only to a certain degree of economic and social development. In this degree of development there was a need and necessity to secure the other's claims even *de facto*, by the hand item, by "pledging" of an item. The creditor requires that his claims to the debtor be secured by obtaining of a pledge of debtor item. The debtor's conjunction of creditor by obtaining debtor's item is safer for the creditor to realize its claims, rather than when the debtor secured these claims by his/her personality, bail, personal insurance. In the Kosovo legal system there is possessory pledge, non-possessory pledge and the pledge over the rights.

Keywords: The right of pledge, pignus, mortgage, pledge object, pledge principles, titles for obtaining the right of pledge by the hand item.

1. Introduction

Financial turnover in Kosovo, as is the case in the countries of the region, is the basis of the modern economy, whereas ensuring the fulfilment of debtor's obligation is of particular importance in terms of financial turnover. It is widely recognized that there are various forms of ensuring the fulfilment of obligations that are personal as well as non-personal. In terms of securing the creditor's property claims, the most appropriate form is securing judicial real rights through the right of pledge. In modern business practice, the use of loans that are secured by the right of pledge, mortgage and pignus is ever increasing.

The execution of the claim is a problem that continuously concerns the creditor, not only at the time of concluding the legal relationship but even later at the time of maturity of the claim. The property status of the debtor is vital for the creditor and his ability to execute his claim in the future. The creditor has no guarantee that the property status of the debtor will always be stable and solvent. The creditor cannot directly control the work undertaken by the debtor who may face a situation whereby the execution of his claim becomes questionable.

In order to prevent a potential problem regarding the execution of the creditor's claim, the provisions of the substantive law provide for different means, which foresee a safer execution of the creditor's claim.

Our legal system, as is the case with every other legal system, has various means for securing creditor's claims. Substantive provisions foresee the contractual penalty, bail, advance payment, earnest money, surety, penalty, right of retention, and right of pledge.

Of all means provided for securing creditor's claims, right of pledge (pignus and mortgage) represents the oldest and safest means for securing creditor's claims.

Right of pledge means creation of any interest on movable property or on any right through agreement or pursuant to the law, whereby the pledgee is granted the right to take possession of that property or use that right in order to satisfy any existing and identifiable obligation secured with the pledge.

2. Types of Pledge

Traditionally, the right of pledge is divided into pignus, namely on the right of pledge in movable property, and mortgage, namely the right of pledge on immovable property. When dividing the right of pledge into pignus and mortgage, the type of the property, namely the subject pledged ought to be considered. Thus, if the object of pledge is a movable property it is always a pignus. Meanwhile, in cases where the pledge object is an immovable property, that means that we are dealing with mortgage as a type of the right of pledge. A pledge may be a pignus and a mortgage. The pignus is a right of pledge on movable property, while the mortgage is a right of pledge on immovable property. The difference between the two types of pledge is not only shown by the object of pledge. Another factor that distinguishes the two is that the pignus, according to rules, is handed over to the creditor (pledgee), whereas in the case of mortgage the pledge is recorded in the respective registers. The first person to divide the right of pledge into these two main types, depending on the movable or immovable property, was Hugo Grotius. Back then, he formulated the concept according to which pignus consists of only movable property whereas the mortgage consists of only immovable property.

The mortgage is a real right of the creditor on immovable property of others. The creditor, as foreseen by the law, is entitled to request the compensation of his claim from the value of that immovable property against creditors that do not have a mortgage on it as well as against creditors who have got the mortgage on the property after him, regardless of the change of ownership of the claimed immovable property. The mortgage presents the so-called "real means" of securing claims, although the subject of insurance is the property, respectively the immovable property. Insurance of claims consists of what the debtor pledges, respectively of the immovable property he owns, for the purposes of securing creditor claims. If, within the deadline foreseen in the agreement made between the creditor and debtor, the latter fails to fulfil his debt towards the creditor, consequently the creditor, through legal means, is entitled to satisfy the claim through the forced sale of the immovable property of the debtor.

This concept of pledge has undergone changes in the contemporary law. Nowadays, there is also the mobile mortgage which implies the right of pledge that consists of movable property. However, the pledgee's right over the movable property, similar to immovable property, is recorded in the public books. In such cases, the division of pledge into pignus and mortgage, according to the authors, is based on the delivery of the property. In this case, it is vital to know whether the property is delivered to the pledgee or whether the debtor keeps it. Therefore, the possession of the property is far more important than the type of property that is subject to possession. Law on Property and other Real Rights of the Republic of Kosovo (hereinafter referred to as LPORR) provides for the possessory pledge, non-possessory pledge as well as the pledge over a right in Article 134, paragraphs 1, 2, 3, and 4.

3. Pignus

The pledge over movable properties is called the pignus. It is presented as part of the right of pledge against the right of pledge on immovable property and the right of pledge over rights. Pignus is established through a contract whereby the debtor (or a third party) enters into obligation towards the creditor (pledgee) for delivering any movable property with ownership rights in order to secure the claim. On the other hand, the creditor is obliged to keep the movable property and, after the expiration of the claim, return the same to the pledger without any damage.

The pledge has been named after the Latin word "pignus" which means palm and symbolizes the manner of controlling the property. The pledge represents real means of securing the execution of a contract. It's an accessory contract. This contract is a pledge on the movable property. Indeed, the pledge contract is a contract where the debtor or any third person called the pledger has obligations towards the creditor, or the pledgee, to deliver any movable property in which the right of ownership exists and which is valuable enough to satisfy his/her claim to other creditors, if the claim is not to be paid after the expiration of the claim; the creditor, on the other hand, is obliged to keep the property and after the expiration of the claim, return it to the pledger without any damage. Pignus is the most ancient right of pledge. It is older than fiduciary, far older than mortgage and other rights of pledge. Pignus is a real right on the property of others. The subject of pignus is the movable property, which secures the claim of the pledgee/creditor to the pledger/debtor and is delivered to the pledgee/creditor in retention (in possession), and from its value of the latter satisfies his/her claims. The movable property which comprises the pignus is individually defined. A right can also be the subject of the pignus. Upon submission of the movable property in retention, a pledgee/creditor acquires the real right to that property so after the expiration date of the claim, he/she can legally satisfy his/her claims from the value of the property. The pledge property is only the one that is in use and capable of ensuring the pledgee/creditor with the value that is sufficient to satisfy his/her claims.

4. Titles for Obtaining the Right to Pignus

By way of establishment the right to pignus can be:

- Contractual,
- Judicial, and
- Legal.

4.1. Judicial Work as a Legal Title for Obtaining the Right to Pignus

It is widely known and acceptable that the contract is "titulus iuris" built on which the right of pledge is obtained. In addition, obtaining the right of pledge based on the contract rather than the most common legal basis based on which the pledge is incurred and obtained, is a rule. In theory, the contract for pledging the property is a pledge contract and in Latin it is called the *contractus pignoratitius* which obliges the debtor or any third party (the pledger) to deliver to the creditor, by way of the right of pledge, the designated movable property, while the other contracting party is obliged to take care of the pledge and, upon the termination of the claim expiration date ensured by the pledge, return it to the pledger.

The right of pledge has not been substantially established by the contract yet. The contract only presents the legal basis (*titulus iuris*) for obtaining the right of pledge. It even states that it only paves the way for obtaining the right of pledge. Precisely, such a contract is only treated as a precontract. In order to acquire a real right, and in this context, a right of pledge, it is also necessary to undertake another action - the delivery (*traditio*) of the movable property; meanwhile, in terms of immovable property it is required the registration of the property in the public books. This act, which is qualitatively important for acquiring the right of pledge, is called the method for acquiring a right, or *modus acquirendi*. Only the acquisition or the existence of the *titulus iuris* and the *modus acquirendi* simultaneously will result in acquiring the right of pledge. Law on Property and other Real Rights of the Republic of Kosovo, Article 136 paragraph 1 and 2 foresees: "The validity of a pledge agreement requires a written document containing the following particulars:

1. the name and address of the pledger and if the pledger is a person other than the debtor;
2. a description of the obligation to be secured; a description of the pledged item;

A statement that the purpose of the agreement is to create a pledge in favour of the pledge holder; the signatures of the parties to the agreement; and the date on which the pledger signs the pledge agreement".

4.2. Judicial Decision as a Legal Title for Obtaining the Right to Pignus

The right to a judicial pledge on movable properties is acquired by seizure in an enforcement procedure when the debtor has not fulfilled the obligation required and the creditor has proposed compulsory enforcement based on the final decision. This can be an administrative enforcement procedure, and according to some theoreticians, it would be best to call it enforcement pledge right. The right of pledge also arises by a court decision. Judicial or compulsory pledge on movable property shall be established based on a court decision taken in the enforcement procedure. Upon registration by the judge, the property is individualized. This may be the reason why a delivery act to acquire the right of pledge is not required in case of a compulsory pledge.

Movable properties that are subject to judicial pledge remain under the possession of the pledger/debtor. However, in such cases, there is a possibility for these properties to be transferred under the custody of the court or of the third person. The decision of the court to establish a movable property is similar to cases of the procedure for securing the claim as a precautionary measure and in the procedure for the execution of movable property for the fulfilment of a monetary obligation. Enforcement for movable items is conducted through registration, sequestration, and evaluation, selling of such items and settling the credit from the amount obtained from sale of such items. Creditor gains the right of pledge for inventoried movable items. If the inventory is done in benefit of more creditors, the order of priority of the right on pledge obtained through inventory or writing in the register of inventory for the purpose of sequestration, shall be assigned according to the order of receiving enforcement proposals by the enforcement body.

4.3. Law as a Legal Title for Obtaining the Right to Movable Property

Statutory pledge exists based on the law in favour of legal creditors assigned for certain legal claims, without the consent of the debtor. Within the right of pledge, in some rare cases, the law is presented as a legal title (legal basis) for the establishment of the right to movable property. This includes cases where after the fulfilment of certain conditions, the law considers that in that case, the right of movable property exists. The conditions for this type of pledge are foreseen by law, and in these cases, the consent of the contracting parties is not required for the constitution of the right of pledge. This means that the right of pledge can exist without publicity. This reflects the weak side of the statutory pledge since third parties cannot know about its existence. So when it comes to movable property, there is no need for the debtor to transfer the property in possession of the pledgee/creditor due to the establishment of the right of pledge, such as the case with the right to voluntary pledge. Furthermore, the statutory pledge may also be granted to persons (carriers, commission agents, freight forwarding agents, warehousemen) who at one point were under the possession of the property, but not any longer. The fact that the statutory pledge depends on the fulfilment of the facts set forth by the law means that the debtor's consent is not necessary for the establishment of such a pledge. This pledge will be created even if the debtor opposes its establishment.

The owner of the apartment (house) in use, the lessor, or put differently, in cases when the lessor leases the apartment to the lessee, there is a greater need for securing the lessor's claim on the lease if the lessee fails to fulfil his obligation. The lessor's statutory pledge consists of movable property of the lessee placed (transferred) in the apartment. The statutory pledge consists of the so-called *invecta et illata*, movable properties which the lessee has in the apartment or on the arable land. Kosovo's LPORR regulates the legal pledge with Article 135 paragraph 1, 2 and 3. Due to the importance of this institute, some cases of legal pledge are mentioned below. One case is the "right of retention" foreseen by Article 267 of the Law on Obligational Relationship of the Republic of Kosovo (hereinafter: the LOR), where the creditor of a claim that has fallen due shall have the right to retain anything of the debtor that is in the creditor's hands until the claim is paid thereto.

According to Article 643 of the LOR in order to secure payment for the work, recompense for the material used and other claims deriving from a contract for work, the contractor shall have a lien on the things made or repaired and on other objects delivered thereto by the ordering party in connection with the work, as long as they are in the contractor's possession and the contractor does not relinquish them voluntarily.

According to Article 693 thereof, in order to secure payment for the transport and the refund of the necessary costs incurred by the transport the carrier shall have a lien on the things handed over thereto for transport and in connection with the transport as long as they are in the carrier's possession or as long as the carrier holds documentation that allows the disposal thereof.

Article 800 of the LOR states - the commission agent shall hold a lien on the things that are the subject of the commission agency contract, as long as such things are therewith or with a person that holds them in possession thereof or as long as a document that allows them to be disposed of by the commission agent is held thereby.

5. Principles of the Right of Pledge

Every right has its own character and characteristics, which distinguish it from others in terms of content, juridical nature, notion. The right of pledge cannot be an exception to it. Based on this, it is easier to distinguish the principles on which the right of pledge is based and which express the essence of the existence and the right of pledge as a real right *iura in re aliena*.

Had it not been a right on itself, the right of pledge could not have had its own principles and vice versa. The particular principles also distinguish it as a legal institution, as a real right from the other rights, whether it is a real right or obligation. In legal literature different authors differ have different views on the principles of the right of pledge. However, some of these principles are found in the work of most of them. The most important principles of the right of pledge are:

1. The principle of accessory;
2. The principle of officiality;
3. The principle of speciality;

4. The principle of indivisibility, and
5. The principle of priority.

5.1. The Principle of Accessory

The right of pledge, as a real right on other's property and securing a creditor's claim in relation to the debtor implies the fact that this right results upon the existence of a binding legal-civil relationship. A right of pledge cannot exist if it is not preceded by the existence of a binding relationship between the debtor and the creditor. A right of pledge cannot be created and exist without the creditor, while the latter exists without the right of pledge. The right of pledge exists with the existence of the claim provided. The right of pledge is created to secure such a claim. It is clear that the right of pledge exists only if there is a certain claim, the realization of which is guaranteed by the right of pledge. The right of pledge presupposes the existence of a certain claim, while the latter conditions the first from which it is secured. All this shows that the right of pledge is not a right established on itself; is not a main independent right. It is dependent on the existence of the claim right, which is an independent right. The accessory of the right of pledge is particularly taken in consideration in the case when the claim or the transfer of the right of claim is transferred to the heir, whereby this transfer from one entity to the other implies the continuity of the right of pledge for securing the claim, no matter who the creditor is in this given case.

Exclusion from the principle of accessory exists in the case of the statutory limitation of the claim that is secured by pledge - the pledgee is entitled to satisfy his/her claim from the value of the property pledged if it is under his/her possession or if the right is registered in public books. This exclusion from the principle of accessory is also included in some foreign laws, such as (e.g. German law and Swiss law for securing mortgage claims, namely Austrian law and Polish law in the case of pignus). The right of pledge may be constituted for future claims, which is the case of a bail pledge which is granted for a claim that may, but not necessarily arises, and the credit pledge that is granted for a claim that may arise from contracted credit. This right arises immediately with the constitution of the pledge, although the claim is for the future; if the claim does not arise, the right of pledge is terminated. Securing non-existent claims at the moment of the creation of the right of pledge consists of both movable and immovable properties. This at the same time is an exemption from the principle of accessory, according to which, at the moment of the creation of the right of pledge, there must be a claim which is secured by the pledged property and the value which satisfies the claim.

5.2. Principle of Officiality

The right of pledge as property security secures a certain claim of the creditor who is entitled to complete (satisfy) his/her claim from the value of the property, if, upon the execution (maturity) of the claim, the debtor (pledger) fails to meet it; fails to fulfil his/her obligations in due time.

Legal arrangements explicitly provide that the creditor or pledgee has the right, before other creditors, to collect his/her claims by the value of the pledge if his/her claim obligations are not met. However, it should be noted that the creditor cannot satisfy the claim by selling the pledged property himself/herself, but only through court proceedings. The creditor can only address the court, requesting the judge to render a decision by which the pledged property is to be sold at public auction or according to a certain price, when the property already has a stock price or market price. This is a characteristic feature of the principle of officiality, which is preceded by the LPORR of Kosovo. Article 168 of the specified law stipulates that, upon default, a pledge holder may sell, lease or otherwise dispose the pledged item. A sale of a pledged item can be affected by public auction or in any other suitable manner. In accordance with the principle of officiality, the so-called *lex commissoria* is forbidden. The pledge creditor is forbidden to collect debt from a pledged property based on the unilateral declaration of will, and similarly any contractual provision is also forbidden, which, at the moment of entering into a pledge contract, foresee that the pledged property be transferred to the ownership of the creditor if his claim is not fulfilled or in such case the creditor may hold the pledged property for himself/herself or sell it at a pre-determined price.

This is foreseen in the LPORR of Kosovo in Article 130 paragraph 1 where it is expressly stipulated that "An agreement, entered into before the secured claim has matured, is void if it provides that upon non-payment after maturity of the secured claim the encumbered assets are to become or to be transferred into the ownership of the secured creditor or the encumbered assets are to be sold at a fixed price

In principle, the creditor's ownership of the pledged property is prohibited. However, the exemptions from this principle are contained by most of the contemporary legal systems including the LPORR of Republic of Kosovo. According to Article 169

of the law in question "the pledge holder may purchase the pledged item only at a public sale or a private sale if the pledge item is sold in a recognized market, or in cases where commonly known standard prices exist for the pledged item.

5.3. Principle of Speciality

By legal nature, the right of pledge is a real right. Real rights are established only on the individually determined property. As a real right, the pledge right cannot be anything else but a property. It is made up of an individually defined property. Thus, the pledge property must be individually defined, whether it is movable or immovable. The pledge is an accessory right and as such depends on the essence of the claim, which is provided by the individually determined pledge property. Thus, this principle implies that with right of pledge only secures the specific claim of a creditor (and not an indefinite number or indefinite amount), and the right of pledge may only exist on certain properties or on many individualized items. There are some exceptions to the principle of speciality. The first exception is that the right of pledge can secure both future and conditional claims. The right of pledge, can also secure eventual claims, respectively the claim that will emerge or (if emerged) will still exist. This can be the case when a person gives something of his own as insurance for the obligation that may emerge but not necessarily emerges. For example, a person rents the ship on the ocean and leaves his/her watch as a pledge in case he/she damages the ship (bail pledge). Such an exception can be found in the LPORR of Kosovo which in Article 131 stipulates that "A proprietary security right can be granted for securing present, future and conditional claims.

5.4. Principle of Indivisibility

By its very nature, the right of pledge is inherent, while the entirety of the pledged property with all its constituent parts secures the claim of the creditor. The principle of indivisibility implies that the entire pledge property secures the claim until it is fully fulfilled. The right of pledge is indivisible, primarily in terms of the claim secured through the pledge, and secondly in terms of the pledge property. The meaning of indivisibility consists in that the creditor holds the right of pledge even after the partial fulfillment of the claim, until the debtor pays all the debt. The right of pledge is indivisible even if the obligation is divisible. The claim is complete and as such is secured; the pledge property is complete and only as such provides security. This means that only as a whole the claim is secured by the pledge and that only the pledge property as a whole can secure the claim. The entirety of the claim consists in securing the pledge with all its parts. Meanwhile, the entirety of the pledge property consists in its "ability" to secure the claim with all its components and parts, its accessories and pertinence, as well as harvested and non-harvested (separated) natural and non-natural fruits. In this regard, the LPORR of Kosovo foresees that "the mortgage extends over all parts of the immovable property unit, including the buildings thereupon that are firmly attached to the ground. The mortgage covers all component parts and natural fruit of the immovable property as long as the latter are not separated from the principal thing. The mortgage secures the secured claim until it is completely paid off. A partial payment does not affect the mortgage.

The principle of indivisibility is also dealt with by the most popular civil codes such as the French Civil Code in Article 2114, Austrian Civil Code in Article 457, and the Swiss Civil Code in Article 889.

5.5. Principle of Priority

The right of pledge exists on the designated property. A certain property may be subject to more rights of pledge. The property is pledged for claims of various entities, which in this case are pledgee creditors. This represents a cumulation of the rights of pledge. Cumulation of the rights of pledge may emerge at the same time or at different times. In these cases it is necessary to foresee the possibility of the fulfillment of the secured pledged claims.

The creditor acquires the right of pledge based on which he has the right to collect his claims before other creditors and before those who have acquired the pledge over that item after him. The pledge secures the creditor, not only in relation to the debtor, but also in terms of eventual reflections by others in this matter. Since more rights of pledge compete over the same pledge property, there is a need to regulate the relationship between them. Similarly, a contrario when more creditors have the right of pledge over the same pledge property, from the value of which they are secured, there is a need to establish a relationship between them. The maxim prior tempore, potior iure (First in time, greater in right) has been set long time ago. A particular feature of the mortgage is its range on the registration in public books. It is regulated by the principle of priority, according to which the protection of immovable property rights is determined according to the time of registration in public books. In this way, the order of priority in payments of claims deriving from mortgaged immovable properties is established. This concretely implies that the first mortgaged immovable property will first fulfil the claims of the

creditor who first constituted the mortgage, and after that, the claims of the other creditors who constituted the mortgage in that immovable property after him if anything is left, and according to the order. The LPORR of Kosovo has foreseen the principle of the ranking of real rights with Article 118 which stipulates "The ranking of several rights encumbering the same immovable property shall be determined according to their date of entry into the register. Rights that were registered on the same day and at the same time have equal ranking". Article 119 of the same law provides for the possibility of changing the order of ranks, but in this case an agreement is required between the holders of the rights that are affected by the ranking change. Meanwhile, Article 120 of the law in question provides for the possibility of reservation of priority ranking stating that "the owner of an immovable property when registering an encumbrance on such property may make a reservation that grants authority to have a different, clearly defined right registered with priority ranking over the encumbrance. The right of priority is also foreseen by most of the world's legal systems and is regulated by special laws or civil codes/Article 1209 of the GCC, Article 893 of the SCC, Article 1056 FCC.

6. Entities of the Pignus

The pledge itself does not emerge or come out of thin air; it is established by the people. It is clearly not established by each and every person socialising with others in a rally, in society, or in gatherings, but only by those who enter together in a specific legal relationship, standing opposite one another, for the purpose of realizing any property interest. A relationship, be it social or legal, cannot be conceived without people, without entities. Therefore, it is clear that the people, the entities are needed for the establishment and existence of the legal relationship of the pledge, as for any other civil-legal relationship. One entity is known as the creditor/pledgee and the other is known as the debtor/pledger.

The creditor/pledgee is the entity for whom the right of pledge is constituted and who has the right to satisfy his claim from the value of the pledged property. He is the holder of the right of pledge. His right acts on all other persons, is an erga omnes entitlement, which means that it is enforceable towards all, the debtor from the relationship of obligation, the pledger, as well as towards third parties. In this legal relationship the debtor is the person who obliged to fulfil the obligation of the creditor from his/her property, namely the pledger/debtor who has pledged his/her property to secure the claim of the pledgee/creditor. However, the pledger/debtor is not necessarily the same person with the debtor from the obligational relationship because in certain cases there is also a third person who pledges his/her property for securing the creditor's claim for the debtor from the obligational relationship. From the content of Article 133 and 134 of the LPORR of Kosovo it is noticed that the lawmaker names the entities of the right of pledge as the pledger and the pledgee.

7. THE SUBJECT OF PIGNUS

In order to constitute the pignus, it ought to have its own subject. The subject of the right of pledge may be any movable property that is in legal circulation, including the share of joint ownership.

The property must be individually defined and non-consumable. If the subject of the pledge would be the non-consumable property, then the right of ownership would be transferred to the pledgee who would return the same amount upon termination. In literature, this is called an irregular pledge (irregular pignus). The subject of the right to pignus may also be the right that has a property value. Such rights are: copyright and disclosure, other rights to industrial property, the right incorporated into securities, the right to inheritance, etc.

Subject of the pledge can be properties which were given as the pledge. However, in this case, the pledger shall notify the pledgee and require from him/her to deliver the pledge to the other pledgee upon collection. The LPORR of Kosovo in Article 138 paragraph 1 stipulates that "any movable item or right that is legally transferable can be pledged. Property that is jointly or commonly owned may be pledged only if all joint or common owners consent the pledge. Subsoil minerals and hydro-carbons and rights to subsoil minerals and hydro-carbons can be pledged in accordance with the provisions for the transfer and encumbrance of subsoil minerals and hydro-carbons or such rights in the applicable law. According to the LPORR of Kosovo, subjects of the pledge may also be generic things of the same kind and quality as well as pledge of future items and inventory

8. Conclusions

The right to insurance in the Republic of Kosovo, as every branch of law has undergone considerable changes, adapting to social transformations and the demands of the modern economy. If the right to legal property insurance of Kosovo is comparable to the rights of the countries of the region, it can be inferred that many of the institutions for securing the claims

are almost identical. LPORR of the Republic of Kosovo has foreseen the possessory pledge, non-possessory pledge and a right of pledge as a fixture for securing claims.

By all means provided for securing the creditor's claim, the right of pledge (*pignus* and mortgage) is the oldest and one of most secure means of securing creditor claims. The right of pledge is a real right. It is a real right over other's properties. It is an *iura in re aliena* right. The pledge is a real right by which its pledgee or creditor may request payment of his claims from the property if they are not to be paid within the prescribed time limit. Put differently, the right of pledge is a real right to other's property, and from this right the pledgee has the power to satisfy his/her claim from the pledged property if the debtor fails to fulfil the obligation assigned at the appointed time.

Traditionally, the right of pledge is divided into *pignus*, namely on the right of pledge in movable property, and mortgage, namely the right of pledge on immovable property. When dividing the right of pledge into *pignus* and mortgage, the type of the property, namely the subject pledged ought to be considered. Thus, if the object of pledge is a movable property it is always a *pignus*. Meanwhile, in cases where the pledge object is an immovable property, that means that we are dealing with mortgage as a type of the right of pledge.

In the future, Kosovo's lawmakers should be committed to establish a right to insurance on a variety of movable properties that are important to business activity in order to facilitate access to credit through a legal regime that is in accordance with international standards such as those set by the United Nations Commission on International Trade Law (UNCITRAL) and the World Bank.

Bibliography and Literature

- [1] Abdulla Aliu, "Real right (E Drejta Sendore)", Prishtina, 2014., p., 401.
- [2] Alajdin Alishani, Law on obligational relationships (E drejta e detyrimeve), Prishtina, 1985
- [3] Dragoslav R.Zhivkovic, Komentar zakona o hipoteci, Beograd, 2006
- [4] Dragan Klepic "Hipoteka kao realno srtedstvo obezbedjenja trazbine prema duzniku", Beograd, 2004.
- [5] Ejup Statovci, E drejta e Pengut-aspekte comparative (The Right of the Pledge - comparative aspects), Prishtina, 1988
- [6] Medic Dusko, Zalozno pravo, Banja Luka, 2002.
- [7] Dejan Brkic, Nepokretnosti prava na nepokretnostima promet prava na nepokretnostima i upis u javne knjige, Beograd, 2007, p. 27
- [8] Milutin Srdic –Mirjana Prentovic "Svojinskopравни odnosi u Republici Srbiji", Beograd
- [9] Stankovic Obren & Orlic Miodrag, Stvarno pravo, Beograd, 1996
- [10] Pravna Encikopedija, Beograd, 1989, p. 378.
- [11] Official Gazette of the Republic of Kosovo No. 16/19 June 2012, Prishtina, Law No. 04/L-077 on Obligational Relationships.
- [12] Official Gazette of the Republic of Kosovo, Prishtina: Year Iv, No. 57/04 August 2009 Law No. 03/L-154 on Property and Other Real Rights, Assembly of the Republic of Kosovo.
- [13] Law No. 04/L-136 on the Registration of a Pledge in the Registry of Movable Property, 2012
- [14] FCC.
- [15] GCC.
- [16] SCC