

PROTECTION OF THE RIGHT OF REAL SERVITUDE ACCORDING TO LOCAL AND INTERNATIONAL LEGISLATION AND PRACTICE

PROTECCIÓN DEL DERECHO DE SERVIDUMBRE REAL SEGÚN LA LEGISLACIÓN Y LA PRÁCTICA LOCAL E INTERNACIONAL

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ABSTRACT

The right of servitude as a real right enjoys the same rights as other real rights. Among these rights is the protection of the right of servitude in case it is violated by persons who are not holders of this right. Based on the local legislation as well as that of other countries, the holder of the right of easement has the right to protect the right of easement in case that right is violated by someone else, and not only the holder of the right but also the owner of the servient property in case it finds that the holder of the right of servitude does not use the right that he has, or in the case that he finds that the holder of the right of servitude uses that right causing damage to the owner of the servient property! All this based on the judicial practice that the parties seek the protection of the right of real servitude, as well as the right holder and the owner of the servient property, we have tried to show through this paper in short points how a right can be protected of real servitude based on local law and that of international countries!

Keywords: easement right; real easement; protection of real easement; self-defense, court decision.

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RESUMEN

El derecho de servidumbre como derecho real goza de los mismos derechos que los demás derechos reales. Entre estos derechos se encuentra la protección del derecho a la servidumbre en caso de que se a violado por personas que no sean titulares de este derecho. Con base en la legislación local así como de otros países, el titular del derecho de servidumbre tiene derecho a proteger el derecho de servidumbre en caso de que este derecho sea violado por otra persona, y no solo el titular del derecho sino también el propietario. de la propiedad sirviente en caso de que encuentre que el titular del derecho de servidumbre no usa el derecho que tiene, o en caso de que encuentre que el titular del derecho de servidumbre usa ese derecho causando daño al dueño de la propiedad sirviente! Todo esto con base en la práctica judicial de que las partes buscan la protección del derecho de servidumbre real, así como el titular y el dueño del predio sirviente, hemos tratado de mostrar a través de este trabajo en breves puntos cómo puede ser un derecho. ¡Protegido por la servidumbre real basada en el derecho local e internacional!

Palabras clave: derecho de servidumbre; servidumbre real; amparo de la servidumbre real; legítima defensa; decisión judicial.

INTRODUCCIÓN

The right of servitude as a real right is considered an absolute right over the specific thing. Absolute rights are considered subjective rights which are acquired on the basis of objective law. More specifically, let's focus on the absolute right, since the subjective right is divided into absolute and relative right. In the concrete case, the right of servitude is considered as an absolute right, just like the right of ownership. Why is the right of servitude considered an absolute right? Taking into account the characteristics of these rights and anticipating that the right of servitude has these characteristics, then we say that just like the right of ownership and the right of servitude have an absolute character over a certain thing. So the right of servitudes as a real right has all the characteristics as an absolute right. As imperative norms that define the right of real easement are those of the LPORR of Kosovo, which define the definition of the right of real easement, as well as the division of easements, and above all it is defined and how it can be to protect the right of servitude in cases where a third party violates that right. From this it is understood that this right is also protected by the Law and that for the disturbance, obstruction, and denial of the right

of real easement. If we have an absolute right, in this case a right of servitude, then we say that the holder of this right has a better position compared to relative rights. This is said because if you are the holder of any absolute right, everyone should respect this position, e.g. a holder of the right of real easement can stop anyone from infringing his right of easement, and also in the event that it has already been violated, then I can seek legal protection by filing a lawsuit in Court. In all these cases, there must first be a right to claim and that claim must originate from the subjective right, in this case from the right of servitude. This means that in order to seek legal protection from the court, there must first be a right of request from one party, which we call creditors, against the other party, called debtor. He requires this protection through filing a lawsuit, which issue we will examine below.

METHODOLOGY

The paper as a whole will have content based on the exact basis of the comprehensive research that the legal scientists have done on the right of servitudes. The content of the paper will mainly be formulated from rich and contemporary sources (literature), both from the literature of

the country's authors and from the literature of international authors. Based on the division of sources used during the formulation of the paper, I emphasize that these sources can be divided into three different categories, since among them there are also laws, magazines, decisions from the judicial system, etc. Therefore, in the first category of literature that will be used in the formulation of the paper, there are books and scientific works related to the topic of the paper in question. The materials taken from the first category of sources formulate almost half of the paper, but always based on them and extracting the best from the books and magazines that deal with the issue of the protection of real easements. So through the analysis of comprehensive materials in the first category, certain issues that are part of the thesis of the paper will be analyzed. The second category of sources (literature) in the formulation of the paper consists of: Constitutions, local laws of civil law as well as those of other countries, both neighboring countries and international laws as well as other legal acts that deal with civil law issues. As well as in the third category of sources (literature) that will help the formulation of the paper in question, there are decisions made by judicial practice. In general, I emphasize that the literature of the work will mainly have materials focused more on the first category mentioned above, that is, it will mainly be taken from classic books, electronic books, both from the Albanian language and from foreign languages.

The paper as a whole will be worked on the appropriate scientific methods, so starting from the main method on which the topic will be treated is the comparative method. By means of the method of comparison, I will try to compare the legal doctrine that has been made to the right of servitudes since Roman times or from the first written sources until today. Together with the comparison method, the statistical method will be used to emphasize the comparisons that will be made. In addition to the method of comparison, other methods that will be used during the formulation of the paper are: historical method,

logical method, analytical method, normative method, method of practical cases as well as other methods that can be accessed during the formulation of the paper.

RESULTS

I. Protection of the right of servitude

Just as the property right enjoys protection as a real right, the same legal protection is offered to other real rights created on foreign objects (Aliu, 2014). This is also about the right of servitude, which can also be protected with a lawsuit (Morina, 2012). So the right of servitude also enjoys legal protection, but unlike the right of ownership which enjoys international protection through international conventions (Law no. 03/L-154 On Property and other real rights, 2009), the right of servitude enjoys protection from the LPORR of Kosovo. Since the right of servitude is considered as a real right and it is also considered as a basic human right like the right of ownership, then this right enjoys legal protection at the national and international level.

So the right of servitude, in addition to being protected by the Constitution and LPORR, the same as the right of ownership is also protected by international conventions.

So not only ownership, but all property rights and servitudes are also protected by the European Convention for the Protection of Human Rights (Document-Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights, 2021).

Thus, the holder of the right of real servitude has the right to seek protection from the Court from anyone who opposes this right, requesting, as the case may be, its complete restoration, the occupation of the infringement, as well as the compensation for the damage caused. In all cases, the person who is legally entitled, can request through the judicial system to remove any third party from the influence, including the servient

owner, since he can also prevent the exercise of the right of real easement. (Civil Code (with judicial practice) p.131., 2003).

For example, in the event that person A, as the holder of the right of tangible servitude to pass through the road of person B, is constantly obstructed by person B as the owner of the servient object. The obstacle becomes continuous and he says not to cross with vehicles but only on foot. Then in the event that person A, as the holder of the right of real easement, has evidence with which he proves that he has acquired the easement for passage and not only on foot but also with vehicles, then an already created right he can defend by filing a lawsuit in Court. Upon making the decision, the court can oblige the person B - the owner of the servient real estate, not to prevent the person A from using the right of real servitude for passage. So in all cases where the right of servitude, which has been acquired, is obstructed, it can be protected and prevented from any type of obstruction that may come from any party, be it the owner of the servient item or any third person.

I. 1. Protection of the right by self- defense

The right of servitude which is hindered by a third party, even by the owner of the servient item, is considered that at this moment the obligation of one party towards the other party is created (Vlahna, 2021). To the holder of the right of servitude that this right is violated, the same before turning to the Court, I can see that this problem can be solved out of court (Bydlinski, 2015).

Depending on the situation of the case, the holder of the right of servitude must act, looking at the possibility of creating any eventual agreement that he can make with the person who violates the right of servitude (Vlahna K. K., 2022).

So, first, I can request that the violated right be protected by self-defense or self-help. Therefore, we can say that the tool for the protection of

possession is immediate protection or otherwise called self-defense. When you mentioned the immediate protection, it should be considered the protection of the possession of the thing by the person himself, without turning to the competent bodies, such as the court (Kondili, 2008).

The aid itself is allowed only in small cases, that is, which are not very complicated in the dispute. In all cases where we think to protect the de facto power and that under the conditions provided by law, we can first defend ourselves. Actual power in the concrete case is understood as the effective economic power exercised by the holder of the right over the given item.

And in the case of the right of real servitude, if we say it has been violated by someone, then it must be known that the actual power over the holder of the right of servitude has been violated or hindered. Therefore, in cases where we say to the holder of the right of servitude that his right has been violated, it must be understood that the actual power is obstructed either by the owner of the servient object or by any third party. This means that the holder of the right of tangible servitude is also the possessor of the thing, since if you are not the possessor of the thing, you cannot create the right of tangible servitude. There may be exceptions to this, but in rare cases when both parties create an agreement that the right of servitude is possessed twice within a month or for a certain time. Otherwise, in the event that the created servitude right is not continuously possessed by its holder, that servitude right is extinguished as existing. Which means that if the holder of the right of easement has no actual power, then at the request of the servient owner, the established right of easement can be extinguished by a court decision, as well as by removal from the register of rights of real estate.

In the specific case when the actual power (possession) over a right of easement is hindered, then the holder of the right of real easement has the opportunity to initially defend himself. Self-

defense can be done by any owner of the right of easement who sees that his right to possess the right of easement is being violated. In this case, before turning to the court, it is allowed for the same to forcefully remove the direct, illegal attack on the object of the right of servitude. Therefore, the holder of the right of servitude has the right to self-defense, against any subject who unlawfully disturbs him in the exercise of the right of servitude. According to the LPORR of Kosovo, self-defense is not foreseen in the right of real easement, but since such a thing is allowed and mentioned in the protection of possession, this will also be allowed in the protection of the right of easement. Why will it be allowed that even in the right of servitude we can defend ourselves?

The reason is that in cases where you are the holder of the right of real servitude, you are definitely also the possessor of the thing, only that you have a stronger legal basis on that thing, more specifically, you have a real right on the certain thing and you don't just have possession. Therefore, since the LPORR of Kosovo 11 (LPORR of Kosovo, 2012) emphasizes that the possessor can use reasonable force for protection from illegal actions in preventing his possession, if the intervention is immediate and adequate measures have been taken (Aliu A. , 2014).

In all cases where we want to use self-defense, we must justify it by showing whether the case in which self-defense is used meets the conditions. So this leaves us to understand that self-defense can be used by the holder of the right of real easement only if the conditions stipulated by law are met. (LPORR of Kosovo, 2012). The conditions provided by the law and which must be fulfilled cumulatively to consider that self-defense is right are as follows:

1. The risk is direct;
2. Self-help is necessary;
3. Self-help action responds to the circumstances of the risk (Aliu A. , Property rights,, 2014).

1. As a good condition, the risk was direct, by which condition it is understood that the holder of the right of easement reacts, protecting his right, at the moment when his right to use the right of easement is violated. Specifically, the holder of the right of easement intervened immediately, respectively when the possession of the right of easement becomes direct, then the protection by the holder of the right of easement must be done directly. For example, In the event that the owner of the dominant thing is prevented from exercising the servitude for passage, by the servient owner, telling him not to pass or not to possess his way for passage. According to this condition, the dominant owner is allowed to verbally defend his right, but not to exceed the action that comes from the opposite party. So everyone can forcibly remove the illegal direct attack on the object of their possession. (Aliu A. , Property right, 2014, p. 82). Self-help is not allowed and the self-help party will not be justified in the event that the attack on the servient owner or the third party that prevents the possession of the right of servitude is exceeded, such a thing will not be legally allowed (Aliu A. , Property rights,, 2014).

2. Self-help must be necessary - To call for self-help, it must be necessary. This means that the dominant owner can defend himself but never start first against the servient owner or the third party who prevents the use of the right of real easement. In no way can we be justified in self-help, in case the attack can be repelled and the parties can negotiate, that is, solve the issue through agreement in a peaceful way (Games, 2008).

3. And the third condition of action with self-help responds to the circumstances of the risk - According to this condition, it is implied that the use of force must be in proportion to the value that is being protected. (Aliu A. , Property right, 2014) This means that the right that is protected, is protected as much as it has value, e.g. if a real right is protected, don't even think about violating someone else's life just to protect that

right that is already being violated by someone. It should always be seen whether the issue can be resolved with an agreement with the person who violates the right, in case the agreement cannot be created, then the main national sources leave us the opportunity to seek legal assistance by addressing the Court through the filing of a lawsuit (Arsen, 2009), to start the contested civil procedure. (Friderman, 2022) This happens because in all cases where there is a dispute between the parties. (Glannon, 2008) Self-help is also presented in different legislations of both regional countries and beyond. Self-defense under the legislation of other countries is called immediate defense, according to which provisions state that the possessor of the thing has the right to object there and then by using an appropriate defense (LPORR of Kosovo, 2012).

And in the right of servitude, we can protect the right with self- defense as it is said in the protection of the possession of the thing, since in the servitude, it would not be possible to think of a right of servitude without possessing the thing on which it is created the right of real easement.

I. 2. Protection of the right by judicial means

The person who exercises a right of servitude has the right to seek protection from the Court from anyone who opposes this right (Skrape, 2011). The right of servitude enables the holder of the right of servitude to protect his rights from any illegal claims of third parties, or of the owner of the servient object. As it was emphasized above, the right of real servitude, in addition to self- defense, this right can also be protected by means of the legal remedy that is the lawsuit. In all cases where disputes arise between two entities, specifically between the owner of the dominant object and the owner of the servient object, regarding the right of servitude, then the dominant property that is the owner of the right of servitude has the right to address the Court through a document called a lawsuit, otherwise known as a confessional lawsuit (*actio confesoria*) or an affirmative lawsuit. In all cases

when we want to file a lawsuit, we must first stop at the formal side of the lawsuit, as well as the material side of what and how we file it. This is important because if the lawsuit is not founded on the basis of the legal provisions of the LPK (Law no. 03/L-006 for the Dispute Procedure, 2008), as well as if it is not based on evidence of the established factual situation, then the judge of the case dismisses the lawsuit as not allowed by the law, and also as not based on evidence (Morina I. &., 2012).

For the claim to exist, we must first know whether the right has been created. Then who is the plaintiff and the defendant. So, in the present case, the plaintiff is the person who enjoys the right of material servitude, or more precisely the owner of the dominant thing, while the defendant can be the owner of the servient thing, as well as any third party (03/L-006, 2008). There may be other cases, for example, in case we have several holders of the right to real easement. This happens when we have co-owners of the dominant property who all enjoy the right of easement. Then in the lawsuit, each co-owner can be presented as the subject separately or can be presented only to the co-owner whose right of easement is violated or denied.

From what was said above, lawsuits for the protection of the right of servitude are:

1. Lawsuit for the prohibition of disturbances in the enjoyment of the right of easement
2. Lawsuit for confirmation of the right of real easement.

1. The lawsuit for the prohibition of disturbances in the enjoyment of the right of real easement - is presented by the holder of the right of real easement in those cases when he is not completely denied the right to exercise the easement, but the defendant performs actions that prevent him illegally the plaintiff to enjoy the right of real easement and that in a complete and quiet way. In this lawsuit, the plaintiff requests the recognition of his right of easement, as well

as the obligation of the defendant to cease the violation of the right of easement, and may also request that the violation of the right of easement not be repeated in the future. In addition to others, the plaintiff can request compensation for the damage, if he considers it and has evidence to prove that by preventing him from exercising the right of easement, he has also caused damage. It should be noted that in case of filing the lawsuit in question, the plaintiff has the burden of proof. This means that the same rules apply as for other lawsuits, i.e. whoever claims a right has the obligation to prove it, with the exception that the plaintiff in this lawsuit is sufficient to prove that he is the holder of the right of servitude and is not forced to prove that the respondent does not have the right to the easement it claims, or any other real right.

2. In addition to the subjects, special importance is given to the object of the lawsuit. In the case of the right of servitude, we must know whether the party has been denied the right of servitude or whether that right is being violated. Denial and encroachment have a difference, since in the event that a right is denied, then a lawsuit is presented to the Court for the denial of the right, which means that the opposing party is required to recognize the right of servitude. In this case, when we are dealing with the denial of the right of real easement, it should be understood that the right of easement which is created, is denied or more precisely is not recognized as a right either by the owner of the servient property or by any third party. Therefore, in these cases, we turn to the Court with the object of the lawsuit: The lawsuit for proving the existence of the right of servitude. Otherwise, this lawsuit is also called an affirmative lawsuit, which means that the holder of the right of real easement through this lawsuit asserts and demands that it be proven that the right of real easement really exists and did exist. In addition to denying the right of real easement, this right can also be violated. An established right can be violated, on which the exercise of the right of servitude is prevented and that continuously, either by the owner of the servient

item or by any third party. And in this case, when we are dealing with the violation of the right of real easement, we turn to the Court by presenting a lawsuit, with the object of the lawsuit: a lawsuit for the termination of the violation of the right of real easement. The lawsuit for the termination of the violation of the right of real easement is otherwise known as a negative lawsuit (Kondili, Civil law II, 2008).

In addition to the above, as a first point for the lawsuit to have a legal basis, that of the Civil Code, the plaintiff must prove:

1. the existence of the right of real easement;
2. interference with the right of servitude by the respondent when this right is denied.

So the party that files a lawsuit for the denial or infringement of the right of real easement must first prove that the real easement really exists and that the plaintiff is really the holder of the right of real easement. The question arises, how can it be proved if you are the holder of the right and how can the existence of servitude be proved?

That you are the holder of the right of servitude, each subject of the right can prove it if he has the legal title from which the right of servitude is created, also if this right is registered, then we have a legal basis stronger to testify in Court. Therefore, we attach to the lawsuit the legal title on the basis of which the right of servitude was created, as well as the possession sheet extracted from the cadastral state. So as a legal title we can have a contract or a will, or any court decision by which the right of real easement was created, as well as the possession sheet of the cadastral state in case the right of real easement is registered.

And also the holder of the right of real easement, to whom the right is denied, must show how it was denied and what are the reasons that lead to disputes with the opposite party. In the following, we will see the lawsuit with its object: The lawsuit for proving the existence of the right of servitude.

I. 2. 1. Lawsuit for the protection of the right of servitudes (Macedonia, 2010)

In the event that the holder of the right of real easement claims to protect his right, he can file a lawsuit with the object: proving the existence of the right of easement. The party in question formulates the lawsuit based on the LCP, starting from the introductory part in which it is submitted to the Court that will submit the lawsuit, then the subjects in the lawsuit such as the plaintiff and the defendant and then the object of the lawsuit, which in the specific case must be for the certification of the right of easement, but in addition to the certification, the party may request the obligation of the defendant to recognize the right of easement in case the Court certifies such a thing. Then the plaintiff continues with the part of the claim in which it presents the factual situation as well as the evidence that proves the fact stated in the lawsuit. So e.g. in a lawsuit in which proof of the existence of the right of servitude was requested, the plaintiff began by showing that he had used the cadastral plot with an area of 6 m for many years without anyone preventing him, and that he passed by cart, foot and with cattle. For all these claims, the plaintiff attaches the evidence in the lawsuit and the hearing of the witnesses as well as the visit to the scene. From all the facts presented by the claimant in the claim, then to the last part, the claimant requests that the Court examine the same and take a judgment certifying that the claimant has the right of easement of passage by foot and means other passage. Thus, after signing this lawsuit, the same is sent to the Court to examine it and in case it is founded on the basis of the provisions of the LCP and based on evidence, then the judge determines that the dispute procedure should be started, in which the plaintiff waiting for this lawsuit and her claims in it to be approved.

I. 2. 1. 1. Progress of the civil court procedure

When we are dealing with a dispute between the parties, that is, between the owner of the servient

item and the owner of the dominant item, then, as was emphasized in the sub-chapter above, we turn to the Court. As mentioned in the LCP, in the event that a dispute arises between the parties, then the legal-civil issue can be resolved through the Court (03/L-006, for the contestation procedure, 2008). Thus, in case the party claims to have a right of servitude, or they want to create it from the beginning, then I can request such a thing through filing a lawsuit. At the time of filing the lawsuit, it is important to know which court the party addresses? Who are the subjects of the lawsuit and who is the object of the lawsuit?

After that, the plaintiff must present the request of the lawsuit, to which it must attach the evidence as well as finally the request of what the Court wants to decide regarding the lawsuit. Initially, the claimant formulates the claim, in which he notes the court where the claimant has his place of residence (03/L-006, For the contested procedure, of Kosovo, 2008).

The lawsuit has two subjects, the plaintiff party who thinks that he had the right to the right of easement for crossing the road of the defendant party, but the plaintiff party did not allow such a thing. The plaintiff in the said lawsuit did not rely on the winning statute of limitations, even though it had used the real estate of the defendant for a long time, but addresses the court with the object of the lawsuit, the validation of the right of easement. So the lawsuit is addressed to the Basic Court of Prizren, since the plaintiff was domiciled in Prizren. The lawsuit in question, at the time of submission to the Court, is assigned to one of the courts that deals with civil-contentious cases, and after the judge examines the lawsuit, it is considered that the initial phase of the lawsuit review begins. At the initial stage of the review of the lawsuit, the judge of the case begins to examine the lawsuit from a formal point of view, whether it properly contains the object, the subjects, the content as well as the evidence that proves the factual situation, and then looks at the request of the party defendant as well as the signature of the party. If the judge finds that

the lawsuit is in order from the formal side, then he continues looking at the material side. So, on the material side, it stops by examining and investigating the factual situation as well as what the plaintiff is based on. In the event that the judge finds that the formal side and the material side are established according to the LCP and based on evidence, he sends a letter of summons to the defendants, both the defendant and the defendant, noting that on the specified date he will the main review session for the lawsuit in question is held. But in the event that the judge of the case observed that the plaintiff party was not based on the LCP of Kosovo nor was it based on real evidence, then already at the initial stage of the review of the lawsuit, he rejects the lawsuit as not allowed by the law, or in cases where he notices that it is not based on evidence, then he rejects it as not based on evidence.

Thus, the contested civil procedure ends at the initial stage. But if the lawsuit is founded and grounded, then the judge, after sending the parties the summons (invitation), waits for the parties to respond to the lawsuit. LCP (Morina I. &, 2012), emphasizes that the defendant party must provide an answer to the lawsuit within 15 days, and then after the answer, the civil dispute procedure will begin. But in the specific case, even if the defendant does not respond to the lawsuit, then the LCP allows the judge to proceed with the main review of the disputed legal issue. The procedure can start without the sued party, but as a condition, the party that filed the lawsuit must be a participant in the procedure, otherwise the judge will dismiss the lawsuit and end the contested case. But in this particular case, we consider that the plaintiff was in court session, so the judge starts to develop the civil procedure. The beginning of the court session is always initiated by the judge of the case who presents the document for which this session is held, as well as introduces the parties. And then it stops at the object of the lawsuit, which in this particular case, the object of the lawsuit is the confirmation of the right of real easement over the immovable property of another person.

Thus, the judge, based on the principle of review and investigation, finds that the plaintiff was right in the specific case, and that he definitely needed the road to cross, since there was no exit to the main road. The only solution for the specific case was for the plaintiff to pass on the road of the defendant, and such a thing must be approved by the defendant party, since this is what the LPORR of Kosovo and other countries foresee. So the right to pass in necessary cases, in civil-property law is considered to be a right of servitude to pass. So as long as we are dealing with a right of servitude, then this right is also allowed by LPORR.

This made it clear to the judge that the lawsuit in question is founded and also based on real evidence, since by looking at the scene, the judge was convinced that a right had existed in the past and should exist and henceforth. This right had to exist, since the plaintiff was completely right because he had no other way out, except to pass on the claimant's immovable property. So the judge of the case, after receiving the final words of both the defendant and the plaintiff, moves to the third stage of the procedure or to the decision making. Therefore, for the specific case, the judge makes a decision approving the claim of the plaintiff, confirming that the plaintiff has the right of easement of passage with tractor, foot and cattle through the cadastral plot of the defendant for current use, construction land (land agricultural), which is located in the cadastral area, with an area of 10.m, and 4m², registered in the municipal cadastral office in the name of the possessor-owner, and that in the north-south direction, and vice versa, in a length of m, and for a width of 5m, at the edge on the east side of the plot, and from the entrance of the privileged cadastral plot, Ng, k. No..., for current use..., which is located in the cadastral area in the place called..., on the street..., no..., in..., on an area of..., ...m², registered in the office municipal cadastral in..., owned by the plaintiff..., from..., which the defendant..., from..., is obliged to endure and allow the plaintiff to use the right of easement mentioned above without hindrance, with threats

of enforcement violent.

So, based on the request of the lawsuit, the judge of the case approves the same and thereby proves that the right of real easement exists on the immovable property of the defendant. With this decision, the judge obliges the defendant to allow the plaintiff to use his land to pass the plaintiff and that as long as the servient and dominant real estate exists. Also, this servitude exists as long as the dominant owner needs this right, otherwise the right of servitude must be requested to be extinguished.

I. 2. 1. 1. Types of decision-making

As mentioned in the sub-chapter above, the contentious civil procedure, which aims to prove the existence of the right of easement, ends with a decision. The decision in the case of lawsuits, which have as their object the right of real easement, are always judgments, based on which the lawsuit is approved in full or in part, as well as the lawsuit is rejected in full and in part. In the above case, when it was about proving the right of real easement which was thought to exist, but at the moment the plaintiff did not allow its use, in this case the judge of the case makes a decision. This decision is a judgment, based on which the plaintiff's claim is fully approved. In these cases, the question is added as to how the judge of the contested civil case comes to the approval of the lawsuit completely? This happens after the review and investigation of the case by the judge, and in this case the judge decided to approve the lawsuit completely. This approval is thought to have come based on the evidence provided by the plaintiff, such as: listening to witnesses, as well as seeing the judge at the scene (Kola, 2014).

With this evidence, the judge came to the conclusion that the evidence proves that the plaintiff used the defendant's land to cross and that the plaintiff was right and also had no other way out than to cross the defendant's road. So

the judge decides to end the contentious case by making the full decision, with which he decides in full as requested by the plaintiff in the claim. In other cases, decisions can be partial, e.g. in case the plaintiff requests passage to the defendant's land, and this passage be on foot, with vehicles, but also with animals, while the judge, based on the evidence, notes that it is not necessary to pass with animals on the road to the defendant. In this case, the judge would receive a partial judgment, which means he approves the lawsuit for the plaintiff to pass over the defendant's land only on foot and with vehicles (03/L-006, For the contested procedure, of Kosovo, 2008), but not with animals. But except for the cases in which the lawsuit is approved, the same can be rejected, so the judge makes a decision rejecting the lawsuit. The judge would come to this decision, e.g. in case the judge certifies that the defendant party has no legal interest in the matter that he seeks in the claim, and the judge also certifies that the defendant party has other ways to exercise his right. So the judge with a judgment rejects the claim of the plaintiff in its entirety on the basis that the requested right is not necessary to be created, since the plaintiff has other ways to cross the main road, and not cross over the land of the defendant.

CONCLUSIONES

From the aforementioned, we emphasize that the right of servitude can be protected like other real rights. Protection can be requested by the right holder himself, as well as the owner of the servient property. Based on legislation, the right of servitude is protected through self-defense and through judicial channels. Likewise, in the content of this paper, it is emphasized that the right of servitude can be protected by going to court with a lawsuit, which must be justified by the plaintiff, otherwise the judge can reject that lawsuit as not based on evidence! The types and court procedures are clearly presented in the content of the paper and we think they are well explained in short points!

So, as a conclusion of the paper, we emphasize that the right of real easement can be protected from any influence that may come from the third party, since this right enjoys the rights of an absolute right!

RECOMMENDATIONS

Based on the above, the recommendations related to the topic are to improve the legal situation and practice in Kosovo, related to the right of easement and that:

in addition to the creation of the servitude, the protection of the right of the servitude should be legally defined and that by mentioning the types of lawsuits, which are mentioned in the content of the paper!

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APPLICABLE LAWS

- Law no. 03/L-154 On Property and other real rights, Prishtina, 2009, article 52, par 1, 2.1;
Law no. 03/L-006 for the Dispute Procedure, of Kosovo, Pristina, 2008, article, 18, par 2;
Law no. 03/L-006 for the Contestation procedure, Prishtina, 2008, article, 18, par 2;
European Convention on Fundamental Rights and Freedoms, respectively protocol 1, article 1 of the Convention;
Document-Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights, Protection of property, issued by the European Court for the protection of human rights. 2021;
Civil Code (with judicial practice) Tirana, 2003, pg. 131.