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Creation of Real Servitudes through Contractual Agreement under Kosovo Law and Beyond

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Article	Abstract
<p>Keywords: Comparative Law; Contract Law; Legal Title; Property Law; Real Servitudes.</p> <p>Article History Received: Sep 7, 2022; Reviewed: Jul 7, 2024; Accepted: Jul 20, 2024; Published: Jul 31, 2024.</p> <p>DOI: 10.28946/slrev.Vol8.Iss2. 2133.pp213-229</p>	<p>Real servitudes are property rights in foreigners' things (<i>iura in re aliena</i>), in which the titleholder uses others' property to benefit his property. This research aims to analyse the creation of the right of real servitude based on contract as legal title. The analysis specifically examines the provisions of the law of property and other real rights of Kosovo no. 57/2009 and the law on obligation relations of Kosovo no. 16/2012 that do not provide enough specification and clarifications for the content and this type of contract. The isolated analysis only in the provisions of Kosovo law is insufficient for clarification without comparison with the legislation of other countries. Therefore, the Kosovo law is compared with the civil codes of France, Austria, and Germany, aiming to identify similarities, differences, and legal concepts. The work is based on a literature review and normative, comparative, and empirical methods. The research results answer the questions related to the content, form, and type of the contract as a legal title. It shows that Kosovo law, even though it has some similarities with the French civil code when it comes to the conditions of the valid contract, however Kosovo law differs as follows: a) the contract is not the only condition for acquiring the right of real servitude, but the registration is also needed, b) the content of contract must be based on the interaction of provisions of the law on property and the law on obligation relations, c) the same contract is obligation relationship in nature, but it also serves for the transfer of right and registration of the real servitudes. In this sense, it is concluded that Kosovo law is closer to the Austrian Civil Code and German Civil Code. However, it is not a pure German legal concept since it requires two contracts: a contract of obligation and a contract of transfer of real rights.</p>

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INTRODUCTION

The creation of real servitude arises from the necessity of using another's property for the use of property for the benefit of which the servitude is created due to the necessity for road access,

various installations, and more economical use of the property. One way to make it is through legal action (legal work), which includes contracts and wills.¹ In all cases where the right of real servitude is created by contract as a legal title, this right is established by an ancestor since it derives from the owner of the servient property to the dominant property owner.² Thus, the right of real servitude transfers from the owner of the thing to another person who does not have ownership over that thing but acquires the right of servitude. Therefore, the right is created with a valid contract,³ meaning that the owner of the thing has expressed his will to transfer his property's right to servitude to another subject, whether he is a natural or legal person.

As mentioned above, the right of real servitude requires a valid legal title to be created. The law provides that a valid legal title can be a legal act, a decision of a state body, and the law itself. The legal work mentioned by law generally means the contract and will. Therefore, when it comes to contracts, the law of obligation relations comes into force since the contract is a material source of the law obligations, including the formal contract for creating the real servitudes. As a principle of civil law, civil rights and obligations can be circulated by the expression of will between parties, such as contract and will.⁴ But, according to Kosovo law on property and other real rights, the will is not envisaged as a legal act to create real servitudes.⁵

Based on the provisions of the Kosovo Law on property and other real rights (hereinafter LPORR), real servitude can be created by a formal⁶ and notarised legal act. The agreement can be concluded between the contracting parties of the servient immovable property and the dominant immovable property.⁷ However, LPORR is insufficient since it regulates the contract with only one article 253. Article 253, par. 2 provides: “*A contract establishing a real servitude requires the written agreement of the parties setting out the content of the real servitude and the entry of the real servitude in the immovable property rights register. The contract must contain the agreement of the parties that they want to establish a real servitude and its content.*” On the other hand, the method of determining the form of the contract is defined by Law on Obligation Relations (hereinafter LOR), article 52, according to which it is stated that for the transfer of the real estate title or through which any other subjective civil right on the real estate is created, it must be bound in written form.⁸ Both laws do not provide more details about such contracts' conditions, content, and type. These legal provisions are insufficient to determine all conditions of a valid contract without interpretation and interaction of other provisions of both laws. The lack of sufficient knowledge of the content of the law also causes the lack of a valid title for the creation of servitude, which has a negative impact in practice, reflecting several disputes. Some

¹ Ejup Statovci, *The right of servitudes*, (Pristina: University of Prishtina, 2009).

² Jonathan Harr, *A Civil Action*, United States, America, 1995. available in: <https://www.amazon.com/Civil-Action-Jonathan-Harr/dp/0679772677>.

³ Alajdin Alishani, *Practice law of obligations, court decisions, principled opinions, and legal provisions*, (Pristina: University of Prishtina, 1984).

⁴ Haxhi Gashi, “Codification of Civil Law in Kosovo: An Analysis of the Main Principles of Book One – General Part of the Kosovo Draft Civil Code” *Zbornik Pravnog Fakulteta u Zagrebu* 72, no. 6, (2022): 1219-1258.

⁵ Republic Kosovo/Pristina, “Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August” (2009).

⁶ Republic Kosovo/Pristina, “Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August” (2009).

⁷ Aleks Luarasi, *Civil Code with Judicial Practice (First Edition)*, (Tirana: "Luarasi" Publishing House, 2003).

⁸ Republic Kosovo/Pristina, “Law No. 04/L-077 on Obligation Relations, Official Gazette of the Republic of Kosovo / Pristina / No. 16/2012 June” (2012).

lessons can be learned by analysing the content of Kosovo laws compared to other countries' legislation, such as the civil codes of France, Austria, and Germany. These countries' legislation can be selected because they have some common contracts but also different rules when it comes to the legal nature of contracts of real rights, including real servitudes. Furthermore, these legislations give us knowledge of the legal concept of Kosovo law.

This paper's analyses focus on the contract as a legal title. The research questions discussed in this paper are: How is a legal title created for the real servitudes? What type of contract must it be for a valid title? Does the law on property and other real rights have special rules for this type of contract, or should we rely on the rules of the law of obligation relationships? Is only the contract for the creation of real servitudes in sufficient condition, or should the registration of the right be applicable? Is the legal title by contract under Kosovo close to the legal concept of French, Austrian, or German law? What are the practical consequences of invalid legal titles?

RESEARCH METHODS

The research in this paper is based on a literature review that aims to analyse the legal and theoretical concepts of real servitudes. In addition, the normative method is used by analysing laws of Kosovo, such as the Law on Property and Other Real Rights no.57/2009 and the Law on Obligation Relations no.16/2012 aiming to elaborate more in detail on the content, the form and the type of contract for the real servitudes. Further, the comparative method compares Kosovo law with provisions of the French, Austrian, and German Civil Codes to define the contract as a legal title and similarities and differences between legal systems. Specifically, using this method also concludes the legal concept of Kosovo law. Also, the empirical method is applied by analysing Kosovo court cases when it comes to the disputes for the valid contract as a legal title or the informal legal transactions (voidable contracts or only factual servitudes) that hurt the creation of the right of real servitudes.

ANALYSIS AND DISCUSSION

The validity of contractual agreement

The contract as a legal title for creating real servitudes must meet the legal conditions to be valid. The contract must initially contain the general conditions and the prescribed form defined by the LOR. Likewise, the law on ownership and other real rights determines that for the transfer of ownership in real estate, a valid legal act between the alienator and the acquirer is necessary as a legal basis, and the change of ownership must be registered in the register of rights in real estate.⁹ According to the LPORR of Kosovo,¹⁰ it is foreseen how to transfer (circulate) real rights from one subject to another subject.¹¹ Also, in particular, the provisions in the LPORR of Kosovo are determined, based on which it is determined how the right of real servitude is transferred,

⁹ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

¹⁰ This law is called the law on ownership and other real rights (*in Albanian ligji për pronësinë dhe të drejtat tjera sendore*). However, the English version has been translated as "the law on property and other real." Therefore, in this text, we are using the English version of "the law on property and other real," hereafter LPORR.

¹¹ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

emphasising that the transfer of the right of real servitude from one subject to another subject is necessary and a valid legal act.¹²

In this case, a legally valid contract between the alienator and the acquirer and the registration of the right of servitude in the register of property rights are legal conditions.¹³ So, for all real rights and also for the right of real servitude, the contract must be concluded in writing and to the authorised state body. This is also determined by the LPORR, which says that "the contract for the transfer of an immovable property must be bound in writing in the presence of both parties in a competent office (court or notary)".¹⁴ Regarding the form of the contract, apart from the LPORR and the Law on Obligation Relations (LOR) defines that "the contract based on which the real estate title is transferred or through which a subjective right to the real estate is created must be bound in the written form."¹⁵ In the specific case when the right of real servitude is thought to be created through a contract, then this contract must be written; if not, then that subjective civil right cannot be considered created. Generally, we can say that the contract based on which the real right is transferred must be in writing; otherwise, it has no legal effect.¹⁶ Not only is a written contract required, but a formal one is also required, which means it is certified by the competent body, which in this case is the notary.

In addition to the form, it must meet the essential conditions of the contract¹⁷ as they are met in all other types of contracts. If the essential conditions of the contract are not met, then that contract is considered null (null contract) or relatively null (voidable contract). Suppose the contract is created contrary to constitutional principles or imperative norms. In that case, that contract is considered null, while if the contract is created contrary to the will of the contracting parties, then the contract is considered a void contract.

This means that the right of real servitude cannot be acquired if the validity of the creation of this right is contested. Suppose the right of servitude is registered in the public books (registry of registration of property rights located in cadaster offices) but in the meantime. In that case, a third party or one of the contracting parties contests the contract's validity from which the right of servitude was created; a court decision revokes that right. In this regard, when the court decides to declare the legal act unlawful from which the right of real servitude was created, the cadastral office is ordered to deregister this right from the registry since a void legal contract acquired the right.¹⁸ These cases can happen more when we are dealing with the binding of the contract under the influence of fraud, deviation, threat, violence, or intimidation, for which the service owner can request their cancellation.¹⁹ This means that a valid legal title is a condition for registering

¹² Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

¹³ Republic Kosovo/Pristina, "Law No. 2002/5 on the establishment of the real estate rights register, Official Gazette of the Republic of Kosovo / Pristina / No. 34/2008 August" (2008).

¹⁴ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

¹⁵ Republic Kosovo/Pristina, "Law No. 04/L-077 on Obligation Relations, Official Gazette of the Republic of Kosovo / Pristina / No. 16/2012 June" (2012).

¹⁶ Alajdin Alishani, *Practicum*, Pristina, (Pristina: University of Prishtina, 1984).

¹⁷ Nerxhivane Dauti, *Contracts* (Pristina: University of Prishtina, 2012).

¹⁸ Abdulla Aliu, *Civil law (general part)*, (Pristina: University of Prishtina, 2013).

¹⁹ Kastriote Vlahna and Hajredin Kuçi, "Property rights with special emphasis on the right of servitude according to the legislation in Kosovo with a comparative view with some European countries" *Review of International Geographical Education* 11, no. 8, (2021): 1761- 1769.

real servitudes. Additionally, registration deletion may be requested in cases of unlawful legal title, respectively, based on the court's decision. Therefore, the entries in the registry are presumed to be trusted, but verification of the opposite is allowed. Therefore, this situation shows the need for a legally valid contract as a legal title.

The conditions for concluding the contract are classified into general conditions and special conditions based on its validity and force.²⁰ It is the same for the contract of creation of the right of servitude.²¹ First, the general conditions must be met, and then the specific conditions referring to the types of servitudes.

In addition to the legislation of Kosovo, the same conditions for the creation of real servitudes with a contract are provided by the legislation of other countries, such as the French Civil Code,²² Austrian Civil Code²³ and the German Civil Code.²⁴ The general contractual conditions are the same in all these legislations, such as the contracting capacity of the parties, the object of the contract, the reasons for the contract for the real servitudes, and the form of the contract. According to the law on obligation relations of Kosovo, the general conditions for the conclusion of the contract are as follows: 1) The will of the parties who want to bind the contract; 2) The ability of contracting parties; 3) The object of the contract; 4) The reason to bind the contract and, 5) Form of contract for the real rights (such as the right to property, which is also considered as a fundamental human right²⁵).

1. *The ability of contracting parties* is the first condition that the parties must express their full will to consider that the will has been expressed freely, without outside influence. If the opposite is observed, even if the contract has been created, it is considered unlawful legal work. It cannot be considered a legal title to benefit from it in the future, such as the right of real servitude. Initially, the parties who want to establish real servitude with a contract must express their will, and the most important will be the expression of the will of the owner of the servient thing since he will bear the burden of using his right from another person. Both contracting parties are free to express their will and by the mandatory provisions, public order, and good docket, to regulate the relations according to their will.²⁶ According to the legal provisions in force, it is emphasised that persons who intend to create a right must freely express their will and regulate their relations based on that will.²⁷ In the concrete case, the owner of the servient land must express the will to allow the dominant land owner to use his property to meet his needs. Therefore, the will of both parties would have to be written, specifically, signed by both parties at the end and sealed by the

²⁰ Nerxhivane Dauti, *Contracts* (Pristina: University of Prishtina, 2012).

²¹ Nerxhivane Dauti, *Contracts* (Pristina: University of Prishtina, 2012).

²² The 1915 Law No. 4 on French Civil Code, Article 1108.

²³ The Austrian Civil Code (English version), Chapter 17, about contract and legal transactions in general, Articles 859-937, specifically Articles 861, 865, 878.

²⁴ The 2012 Law No. 2 on German Civil Code, Title 3, Contracts. Available in: https://www.gesetze-im-internet.de/englisch_bgb/.

²⁵ Nurhidayatulloh and Febrian, "ASEAN and European Human Rights Mechanisms, What Should Be Improved?," *Padjadjaran Journal of Law* 6, no. 1 (2019): 151–67.

²⁶ Republic Kosovo/Pristina, "Law No. 04/L-077 on Obligation Relations, Official Gazette of the Republic of Kosovo / Pristina / No. 16/2012 June" (2012).

²⁷ The 2012 Commentary on Law No. 077 on Obligation Relations, (Book I): 5. file:///C:/Users/Lenovo/Downloads/Commentary%20I%20UNDP_shq%20(10).pdf.

notary.²⁸ At the moment when the owner of the servient object has expressed the will to create the right of servitude over his object, whether it is a land, domestic, or field servitude, then this servitude is called voluntary, more specifically servitude created by contract.²⁹

When a signed contract creates servitude, the owner of the servient property is obliged to review the exercise of the servitude and not prevent the owner of the dominant thing from enjoying the right of servitude.³⁰ This obligation exists not only for the person who has given consent for the creation of the right of servitude but also for his heirs. These persons are obliged to respect the right of servitude that has been created, which means not to prevent the owner of the dominant property from enjoying the servitude that prevails over the property that they have acquired by contract or by will. So, the contract must be respected and considered as law for the parties.³¹ However, according to the legal system in Kosovo, this right has not yet been created until the right of servitude is registered. It is only obligation relationships.

It should be noted that the contract obligates the parties among themselves, i.e. there is an action-inter party as an obligation³² relationship, but the real right in thing that acts against all (*ergo omnes*) has not yet been created. The parties may sue each other for breach of contract and damages.³³ Accordingly, the same contract has a clause transferring the right and registering it in the register. Thus, in Kosovo law, the causal system is applicable, meaning that the contract of obligations is also effective in transferring real rights and registering property rights in the registry.³⁴ In this sense, Kosovo law's legal concept is closer to Austrian law. Therefore, it differs from French law because real rights, including real servitudes, are created by the contract, which obliges the parties and, at the same time, transfers the title; however, the registration serves for information and is enforceable against third parties.³⁵ This principle is known as a *consensual principle*, meaning that the sale contract, or in the case of a contract for the real servitudes, contains the transfer of title without needed registration as a way of acquisition (*modus aquirendi*).³⁶

2. *The capacity of the contracting parties*, by which it is understood that both parties, the owners of the dominant property and also the owners of the service property, must have the capacity, namely the capacity to create the right of servitude.³⁷ This implies two conditions: the ability to act and the ownership of the thing on which the right of servitude is created.

²⁸ The 2012 Commentary on Law No. 077 on Obligation Relations, (Book I),: 5. file:///C:/Users/Lenovo/Downloads/Commentary%20I%20UNDP_shq%20(10).pdf.

²⁹ Kastriote Vlahna and Hajredin Kuçi, "The Creation of the Right of Real Servitude: Derivative and Original Method Based on Kosovo and Some European Countries" *Hasanuddin Law Review*, 8, no. 2, (2022): 111-121. Mariana Semini, *The law of obligations and contracts* (Tirana: University of Tirana, 2010).

³⁰ Nerxhivane Dauti, *Contracts* (Pristina: University of Prishtina, 2012).

³¹ Robert, Rosa Agustina, and Bismar Nasution "The Rationalization of Debt Discharge Policy for Individual Debtors in Indonesian Bankruptcy Regime" *Sriwijaya Law Review* 6, no. 1, (2022): 101-121.

³² Johannes Voet and James Rose-Innes, *Comentarius ad pandectas*, (Lyon Public Library: Bibliothèque jésuite des Fontaines, 1878).

³³ For more information on the interaction of the rules of the law on obligation relations and the law on property, see

Haxh Gashi and Bashkim Preteni, "Transfer of property based on the property law rules and contract law rules under forthcoming Kosovo Draft Civil Code" *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 42, no. 1 (2021):151-165. Haxhi Gashi, "Acquisition and Loss of Ownership under the Law on Property and Other Real Rights (LPORR): The influence of the BGB in Kosovo Law" *Hanse Law Review* 9, no. 1 (2013): 41-60.

³⁴ Andrea Nathanaeli, *Property law* (Tirana: University of Tirana, 1974).

³⁵ Ejup Statovci, *Property-legal relations in real estate in Kosovo* (Pristina: University of Prishtina, 2009).

³⁶ Ardian Nuni and Luan Hasneziri, *Civil Right II (Property)*, (Tirana: University of Barleti, 2010).

- a) The right of servitude is created by an agreement that the owner himself can conclude if he can act or his legal representative.³⁸ According to the LOR, for the conclusion of a valid contract, the contractor must have the ability to act, which is acquired upon reaching the age of majority (18) or even from the age of 16 if the parties are married.³⁹ The rules of the law on obligation relations and family law apply to these conditions.
- b). The second condition is the ownership of the immovable property. The owner of the servient property or the dominant property must first fulfil the conditions of ownership. The owner of servient property, in addition to the ability to act, must be the owner of the thing on which the right of servitude will be established. Only the owner of the thing can encumber his property, and no other person has this authorisation. The real servitudes exist between two immovable properties.⁴⁰ Therefore, the owners of these two properties must consent to the creation of servitudes. According to the LPORR, only the owner of the thing has authorisations for the use of the thing, its maintenance, and alienation; in general, only he has the right to load the thing with any other material load⁴¹ Except in some cases, only the law can make certain restrictions on one's property, e.g. ownership restrictions such as neighbouring rights, missions, and the right of servitude when the decision of the state body or law acquires that right. Likewise, when the law itself determines, or the law itself compels the owner of the thing to release his thing for the needs of someone else or to tolerate someone else using his thing to satisfy his needs, since for that person, there was no other way out such as the natural flow of water. Thus, the owner of a thing has the full right to freely express his will by contract to allow another person any right, such as the right of servitude in immovable property, such as the right of way, to transport water, electricity, etc.

If two or more persons own immovable property, real servitude can be created by the will of all co-owners. In this case, all co-owners consent is needed. Respectively, when the property has fallen to a co-owner who has not given his consent, the right of servitude cannot be created because the co-ownership over the thing is divided into aliquot parts.⁴² When a thing is divided into aliquot parts, the owner of that part is responsible for the certain part, including any restriction on another person's real rights.

The co-owner, who is the contracting party of servitude, must ask other co-owners in case he is going to alienate that real estate or sell it to someone else, and based on the right of pre-emption⁴³ he must ask the co-owners for the priority in case of sale. In the case of joint ownership of marriage, when the ownership is registered only in the name of one spouse, the other spouse's consent is required for the contract's validity. Notaries are obliged to seek this consent in every

³⁸ Republic Kosovo/Pristina, "Law No. 32/2004 on On Family of Kosovo, Official Gazette of the Republic of Kosovo / Pristina / No.16/2012 July" (2012).

³⁹ Republic Kosovo/Pristina, "Law No. 04/L-077 on Obligation Relations, Official Gazette of the Republic of Kosovo / Pristina / No. 16/2012 June" (2012).

⁴⁰ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

⁴¹ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

⁴² Aleks Luarasi, *Civil Code with judicial practice* (Tirana: "Luarasi" Publishing House, 2002).

⁴³ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

case of sales or encumbrance of the common property of the spouses. In all cases where there are two or more rights holders on an immovable object, the consent of all the owners must be obtained to create a servitude on that object. On the contrary, if the owner of the immovable property does not express his will, then real servitude cannot be created using an unlawful contract.⁴⁴

In addition, if it is necessary for the owner of the dominant thing to create the right of servitude, the owner of the servant thing does not consent. The dominant property owner is entitled to address the court, specifically with a lawsuit for the creation of the right of servitude. However, a lawsuit can be filed if the legal conditions exist for the creation of the real servitude for the first time, and among the main conditions must be the need for the existence of the servitude. This means that the immovable property that needs the creation of servitude has no other options; for example, it has no access to the road, cannot access electricity or water, etc.

Another issue is the situation with a possessor of the thing with a valid title of possession and without a title of possession (*de facto* possession). The possessor of the thing based on the lease contract cannot have this opportunity since the possessor of the property is considered the person who has the authorisation to keep the thing or to maintain the thing and then has the authorisation to use someone else's thing, but not to alienate it (sell) or to create the right for someone else over the thing of which he is the sole possessor. If a person is the possessor of the thing, he does not appear in the real rights registers, but he can possess a thing of someone else only for keeping and using the thing for a certain period. We can emphasise that, e.g., a person who has leased an immovable object cannot create any real right over that object since he only has the authorisation to use the object to the extent agreed upon by the owner. This situation also comes in the form of a *de facto* possessor without a rental agreement or other usage contracts. We point out this because, in the case of Kosovo, there are many *de facto* owners (possessors) of the property but who are not owners or do not have their ownership registered. On the other hand, there is a need to create servitudes or *de facto* servitudes that have already been created and used for a long time. Therefore, to avoid the formal condition, they also make non-formal contracts (factual agreements) and continue the actual use of the servitude. However, this presents difficulties in the legal enjoyment of the right of servitude because, legally, it is not created without a formal contract as a valid legal title and registration.

Being the possessor of a thing is different from being the owner. The difference is that the right of ownership over an immovable object,⁴⁵ have a valid legal title also registered in the cadastral registry, which is proved by a certificate of ownership. The same thing happens with the right of servitude in immovable properties.⁴⁶ If someone considers themselves to be the titleholder of the right of servitude,⁴⁷ then for that right, they must have a valid legal title and have the right registered in the property rights registry. To be considered the legal possessor of immovable

⁴⁴ Olti Skrame, *Commentary on the Civil Code of the Republic of Albania (Volume I)*, (Tirana: Library of Congress MARC record, 2011).

⁴⁵ Francesco Galgano, *Private Law*, (first edition - translated from the original Italian by Alban Brati), (Tirana: Library of Congress MARC record, 2008).

⁴⁶ Republic Kosovo/Pristina, "Law No. 2002/5 on the establishment of the real estate rights register, Official Gazette of the Republic of Kosovo / Pristina / No. 34/2008 August" (2008).

⁴⁷ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

property, only the legal title is sufficient, which means that a contract concluded between the owner of the object and the person who will take possession of his object is sufficient, e.g. the lessee enters into a contract for the lease of the immovable property with the lessor.⁴⁸ In this case, the lessor is the owner of the immovable property, and only he, as the owner, has the right to create any other real right on his real estate, be it ownership, servitude, real estate mortgage, or construction right.⁴⁹ While the lessor cannot establish any property right on the thing he rents since he is only the possessor of that thing and has no legal authorisation⁵⁰ to act as if he is the owner of the thing.⁵¹

As for other situations of factual possession, where the possessor behaves as the owner but has not registered the ownership in the registry for the registration of property rights, there are no legal authorisations to create servitudes. This is so with both the beneficial factual possessor of the immovable property (dominant property) and the factual possessor of the servient property. Thus, none of them have the legal authorisation to create the right of servitude through the contract. Thus, authorisation must be obtained from the owner registered in the property rights registry located in the cadastral offices.

3. *Another condition is the object of the contract.* The thing on which the right of real servitudes is created is only the immovable property.⁵² This type of servitude exists between two immovable properties and is connected to them. Normally, a legal relationship exists between the two owners, and they can conclude the contract. Ownership of both can only be proven with a certificate of ownership, which must be presented at the time of signing the contract.

4. *The reason or need for the creation of the right of servitude* is another contractual condition. This is the need to create servitudes since one property (dominant property) needs the use of service property because the owner has no other option to use his property economically. This may be because there is no access to the main road, and it is impossible to build a network of water supply, sewerage, electricity, or the use and transportation of agricultural or industrial products. In this part of the contract, the type of servitude should also be presented, i.e., is it for servitudes of transit, transportation, or another nature, and is the servitude permanent, temporary, or seasonal? This issue must be clarified and specified in the contracts because the law did not foresee the contract's content but left it part of the contracting parties' will.⁵³

5. *Real rights are transferred through the formal contract.* The same form for the transfer of ownership also applies to the creation of servitudes. This contract is written and notarised before the notary. Failure to fulfil this condition makes the contract unlawful. Also, this contract must

⁴⁸ Nerxhivane Dauti, *Contracts* (Pristina: University of Prishtina, 2012).

⁴⁹ Arvenso, B. D, *De l'acquisition des servitudes*. License, 1866, p. 7. Available form: file:///C:/Users/Lenovo/Downloads/unige_91340_attachment01.pdf.

⁵⁰ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

⁵¹ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

⁵² Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

⁵³ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

be registered in the registry for the registration of property rights, as required for ownership.⁵⁴ If the contract is not formal, it will not be accepted for registration and will be rejected by the cadastral office.

6. *The registration of the real servitudes as an acquisition of the right is necessary under Kosovo law.* The creation of the real rights (ownership, servitudes, pledge, mortgage, right of construction, liens) requires two legal steps: 1) the contract as legal title (*iustus titulus*) and 2) the registration of the right in the property right registry (*modus aquirendi*). A contract alone is insufficient for creating rights as it applies in the French legal system. Under Kosovo law, the contract is only a legal title. At the same time, registration is a way of acquisition of the right of servitude. In cases of lack of registration, real servitude is not created. Therefore, the registration is constitutive, not declarative, as in French law. The registration of the right is required also under Austrian law for all real rights in immovable properties. Compared to the German law, the registration is also required. However, as mentioned above, there are two types of contracts: a contract of obligation and a contract for the transfer of title and registration as a real right contract.

Summarising the discussion from a comparative perspective, the contract as a legal title has been well-known since Roman law. It continues to exist in the civil codes of France, Austria, and Germany. The general condition for concluding a contract is the same under the analysed legislation. However, differences appear regarding the contract as a legal title and the way of acquiring the right. The German law has the principle of abstraction as a legal term that exists for the right of ownership, including the right of servitude and all other real rights.⁵⁵ Under German law, even though the dominant property owner has entered a contract with the owner of the servient property, the latter has not yet acquired the right of real servitude. Another contract is needed for the transfer of title as a real right, including the registration of title in the public registry, so-called land books. This is known as the principle of abstraction and the principle of separation.⁵⁶ According to the legislation of Kosovo, as soon as the right of servitude is agreed upon by contract, the same contract serves as a basis for the registration in the registry for property rights.⁵⁷ There is no applicable second contract for the transfer of title. As emphasised above, Kosovo law applies the causal system to Austrian law in that the same contract also registers the right as a constitutive effect.⁵⁸ Contrary, under French law, the contract *serves as the basis* of the creation of the real servitudes, including in the same contract the obligation and transfer of title,⁵⁹ while the registration has the effect of being informed and enforceable against third parties, article 1582 of the French Civil Code provides as follows: "*A sale is an agreement*

⁵⁴ Republic Kosovo/Pristina, "Law No. 04/L-077 on Obligation Relations, Official Gazette of the Republic of Kosovo / Pristina / No. 16/2012 June" (2012).

⁵⁵ Zweigert Kotz, *Knowledge of comparative law* (translated and adapted into Albanian), (Oxford: Oxford University Press. 2008).

⁵⁶ Faber Wolfgang and Lurger Brigitta "Rules for the Transfer of Movables: A Candidate for European Harmonization or National Reforms" *European Law Publishers GmbH* 6, no.1 (2008): 1-218.

⁵⁷ Republic Kosovo/Pristina, "Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).

⁵⁸ Wolfgang Faber and Brigitta Lurger "Rules for the Transfer of Movables: A Candidate for European Harmonization or National Reforms" *European Law Publishers GmbH* 6, no. 1 (2008): 1-218.

⁵⁹ The 2015 Law No. 4 on French Civil Code: 1582.

by which one person binds himself to deliver a thing, and another to pay for it. It may be made by an authentic or an instrument under private signature.” Thus, with a contract, the agreement is reached, and the title, namely the right, is passed. The right of ownership is transferred to the buyer at the same time as reaching the agreement, even though the item has not yet been delivered.⁶⁰ Analogously, these contracting rules apply to the transfer of other real rights, including servitudes.

Besides the above rules, according to which real servitudes can be created, there are also exceptions based on restrictions placed on the property owner regarding the arrangement of his property with the right of servitude. These restrictions refer to the following cases:

a) The right of real servitude over an immovable property cannot be created if the mortgage right was previously created in the same property.⁶¹ In principle, the right of servitude over the thing on which the right of mortgage exists cannot be created. However, exceptions can be made, provided that the mortgage was registered before and the right of servitude that will be created later does not harm the rights of mortgage creditors over the immovable property. Thus, it is possible to create the right of servitude over a thing that was already mortgaged to a creditor, but the consent of the mortgaging creditor must still be obtained. Otherwise, a contract cannot create the right of real servitude.⁶² If such a thing happens (there is an error in the registration), the principle of priority of registration applies. In this case, the right to mortgage can be applied and enforced before the right to servitude. Therefore, in these cases where the right of servitude is created over an immovable object which had the right of a previously created mortgage, the beneficiary of the servitude or the owner of the dominant property has the right to benefit only from the excess price after the mortgage creditors have been paid. Then, the buyer of the thing encumbered through the public auction during the enforcement procedure receives the encumbered property with the right of servitude because this right had already been registered.⁶³

If the obligation to creditors cannot be paid, then the creditor becomes the owner of the immovable property, which, together with the right of ownership, also carries the right of servitude that a third person has already acquired.

b) Also, the right of servitude cannot be created over an immovable object in which the right of usufruct was previously created because the usufructuary's rights are not violated.⁶⁴ As in the above case, also the right of real servitude can be created over an object to which a right of usufruct was previously created, provided that the usufructuary gives consent to the owner to charge this property with real servitude that restricts his rights. As long as we are dealing with the creation of a real servitude with the conclusion of a contract, then in all cases where we are also dealing with any other right over that thing, the holder's consent of the right over the thing

⁶⁰ Franch Civile Code: 1582; Georges Vermelle. (2008). The contract, special part (translation in Albanian). Tirana: Papyrus, pp. 12, 41.

⁶¹ Republic Kosovo/Pristina, “Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August” (2009).

⁶² Ardian Nuni, Luan Hasaneziri, Civil law (Property), (Trana: Barleti Library, 2010).

⁶³ Republic Kosovo/Pristina, “Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August” (2009).

⁶⁴ Republic Kosovo/Pristina, “Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August” (2009).

is needed. As in the mentioned cases, the holder of the usufruct right and the holder of the mortgage right must be asked to express their consent formally. Otherwise, that contract can be cancelled if the mortgaging creditor files a lawsuit for violating the mortgage right.⁶⁵ The same applies to more real servitudes in the same immovable property.

c) Also, in the case where the property owner has already created an emphyteusis right on this property, he can create the real servitude on this property with the condition that these servitudes end with the end of the emphyteusis.

Therefore, as a summary of this part of the discussion, we can emphasise that the owner of the servient property and the dominant thing must meet the conditions to create a real servitude right through a contract. Based on the current legislation, the right to real servitude, whether land, domestic, or field, can be created by a contract based on the law of obligation relations, based on how the contract is formulated, specifically how to make this contract valid. Apart from the contract, the real servitude must be registered in the public register of immovable properties. From the practice, many cadasters recorded cases are cases of creating servitude by contracts. This is because the contract is an agreement of both parties, and it is easier to create compared to the decision taken either by the court or the administration⁶⁶ which also are possible.

In addition, if the question is raised, will it be possible to create a legal title for creating a real servitude by contract based on rules of law on obligation relations connected to the rules of law on property and other real rights?

The answer normally will be yes based on current legislation and the practice. However, if we rely on the legislation of Kosovo, no clarification has been given on how to create a legal title by a contract; it is only stated that the legal title mentions the name of a contract without further specification. Therefore, when the LPORR of Kosovo says that legal work can create a legal title, this legal provision means a contract and a will. The legal term contract is mentioned in the LPORR, but there is no additional provision for the contract terms. However, the legal basis for the contract terms must be the law of the obligation relations. However, the LOR does not have special contract rules for creating servitudes. Therefore, it would be very necessary that even in special laws, such as in the present case in the law of property and other real rights, the conditions of the contract are defined based on which the legal title is created for the acquisition of the right of real servitude, including the types and content of servitudes.

The legislation does not prioritise the contract or the decisions of state bodies to create a real right, be it servitude, ownership, or whatever, but the contract is more applicable to the parties since the parties define the contractual provisions themselves. However, when several types of servitudes are created either with contracts or other titles, such as the decision of the court or other state body, the volume of use by each holder must be determined without hindering each other and without burdening the owner of the servient property. In the case of the creation of the right of real servitude, the servient owner and the dominant owner somehow create an agreement between them on how to use the thing by the owner of the dominant thing.

⁶⁵ Republic Kosovo/Pristina, “Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August” (2009).

⁶⁶ Siri Winarsi, “Legal Consequences of Disobedience of Provisional Decision of the Administrative Court” *Sriwijaya Law Review* 8, no. 1, (2024): 1-19.

Thus, in the contract, the parties determine what the thing on which the servitude, for example, passage, will be created is, and then the space is determined as to how much it will have to be used; it is determined by the will of both parties what the period will be during which the thing will be used of the servient owner. It will also be determined whether there will be any reward from the owner who uses the thing of another. The other advantage is that the parties with an agreement between them can change the contractual provisions but not to an exaggerated extent, harming the interests of either the servient or the dominant property owner. In addition to the above, the legal title created by contract is the easiest and fastest way to achieve the right of real servitude. So, when the contract is notarised and produces a legal effect, the dominant object's owner can request the cadastral registry to register the right of the servitude already agreed by the contract.

For these reasons, the contract is the most required and applicable legal title, and we would propose the same since the will of the dominant property and the servient property owner are expressed in the contract. It is based on the principle of autonomy of parties in contract relationships, and for this reason, the servitude created by a contract is also called voluntary servitude.⁶⁷ But there is no doubt that the right of real servitude can also be created with other legal titles, as mentioned above.

Court cases

As mentioned above, servitudes must be created based on legal conditions to become effective. In the case of a contract, the contract must meet the legal conditions and be registered. The practice of the courts shows many difficulties in proving the legal title of servitudes and the right itself due to the non-implementation of these conditions.

1. In court practice, disputes are constantly presented regarding the validation of the right of real servitudes because the parties have not made a formal contract and have not registered the right as required by law. The parties have mostly created these rights *de facto* with an oral agreement. Thus, with the *Judgment of the Basic Court of Peja, C.nr. 1461/18*,⁶⁸ the court couldn't prove the legal title of the contract for the creation of the right of servitude of seasonal passage. However, the plaintiff claimed to have purchased the property in 1981 along with the right of passage to the adjacent property of the defendant but failed to present evidence of any written and formal contract or the registration certificate. However, the court has partially approved the request and allowed the seasonal transition, but the other legal basis is creation based on the court's decision. The court has based the decision on the necessary need to pass to another's property for access to the road. So, if it were a regular contract as a legal title, the court would have to prove it right based on the contract as a legal title.

2. In court practice, there are disputes of the nature of the rejection of the lawsuit because the plaintiff. However, he bought the immovable property thinking that there was a passageway to the neighbouring property, but the right was not registered in the property rights register. This is according to the *Judgment of the Basic Court of Peja-Dega in Deçan, C.nr 215/2018*, the claim

⁶⁷ Olti Skrame, *Commentary on the Civil Code of the Republic of Albania (Volume I)*, (Tirana: Library of Congress MARC record, 2011).

⁶⁸ Basic Court of Peja, *Judgment C.nr. 1461/18*, date 13.05.2020.

of the claimant, with which he requested the confirmation of the real servitude on the basis that this right was not registered, was rejected.⁶⁹ The plaintiff purchased the real estate in 2018; for this, he provided the sales contract and certificate of ownership as evidence. However, the neighbouring property owner objected to the passage through his property because he did not have the right to register in the Register of Property Rights. Even though the plaintiff had purchased the immovable property, no transfer right to the neighbouring property was associated with it because it is not registered in the Register of Property Rights. The court has rejected the claim on the basis that the legal conditions, such as the contract and the registration of the right of real servitude in the sense of LPORR, article 253, are not fulfilled.

3. In cases where a real servitude is used without any valid legal title, the court rejects the claimant's request to certify the servitude. Thus, the *Judgment of the Basic Court in Ferizaj C.nr.698/19* did not approve the plaintiff's claim because it has no basis in the sense of articles 252 and 253 of the LPORR.⁷⁰ The court emphasised that even though the passage and access road to the main road were used, there was no contract between the parties for this. However, there was also no reason to create a servitude without an agreement, invoking the necessity of access to the road. This is because the plaintiff's property had another exit to the main road. In this case, it is more important to emphasise the court's finding that there is no legal work or contract between the parties to create the servitude of passage. This is why the agreement between the mountains as a legal title is important for creating the real easement; the request will hardly be accepted on other grounds.

4. It is important to note that the protection of the right of servitude can be requested only by its titleholder. Likewise, the termination of the servitude can only be requested by the owner of the servient property when the interests for which the servitude was created have ceased. Therefore, in cases where the lawsuit is filed by the actual user of the property and not the owner of the servient property, the court rejects the lawsuit. Three levels of courts have confirmed this approach: the Basic Court (Municipal Court), the Court of Appeal (District Court), and the Supreme Court.⁷¹ Therefore, only the owner of the dominant property and the owner of the servient property are legitimate users of the legal rights related to real servitude.

CONCLUSION

The creation of real servitude has evolved throughout history and has not always been the same. The differences can be seen even today in many laws of regional countries and other European countries, which appear in the types of legal titles for the creation of real servitudes. Referring to the positive law in Kosovo, the right of real servitude is created based on legal work, a decision of the state body, or the law. Regarding the legal title created by the contract, the LPORR does

⁶⁹ Basic Court of Peja, Branch in Decan, Judgment C.nr 215/2018, date 08.12.2020.

⁷⁰ Basic Court of Ferizaj Judgment C.nr.698/19, date 23.06.2020.

⁷¹ See: Supreme Court of Kosovo, "Collection of the Court Cases in property law" (2019), Judgment of the Municipal Court C. no. 316/2011, dated 05.12.2011; The Judgment of the District Court, Ac. no. 135/2012, dated 27.12.2012; The Judgment of the Supreme Court, Rev. no. 157/2013, dated 03.06.2013. Before 2010, the Basic Court was the Municipal Court, while the District Court decided the appeal after the law's entry into force on court no. 03/L-199 approved in 2010, the organisation of the courts is in the Basic Court, the Court of Appeal, and the Supreme Court. The new law on court no. 06/L - 054 of 2018 maintains the same organisation.

not define special provisions for the contract that can be a legal title to create real servitude. It is only emphasised that a contract between the owner of the servient property and the dominant property owner can create the right of real servitude. However, the rules of the law on obligation relations must be applied. The types of contracts, their form, and conditions can be based on rules of the law of property and the law of obligation relations. The contract conditions can be derived from the general conditions of contracts regulated by law on obligation relationships and some specific rules that apply to all real rights, such as ownership, servitudes, mortgages, real encumbrances, and construction rights. It must be concluded that according to Kosovo law, a formal contract is required to create real servitudes as legal title (*iustus titulus*), and such a right must be registered (*modus acquirendi*). Likewise, informal contracts (only written documents) can only serve as proof of the parties' good faith, but not for the valid legal title. The factual possession of servitudes declared between the parties informally does not constitute legal title either. The court practice shows that no valid title is created without fulfilling the conditions for the validity of the contract. Also, without a valid title, the servitude cannot be registered. In the absence of the registration certificate, the existence of the right of servitude cannot be proven. The research shows that the Kosovo law differs from the French law, where real servitude is created by contract without further sept for registration. This is known as a consensual principle. The registration serves as information and is enforceable against third parties. According to Kosovo law, the contract is required as a legal title and registration to acquire rights. However, the same contract also serves to transfer real rights. This system is called the causal system and is part of Austrian law. The Kosovo law, even though the content is the same as the German law, differs because, in German law, two contracts are required: one as a contract of obligation to establish the servitude and the second contract for the transfer of the real right, respectively the servitude, known as the separation and abstraction principle. These principles are not applicable under Kosovo Law.

REFERENCES

- Aliu, Abdulla. Civil law (general part). Pristina: University of Prishtina, 2013.
- Alishani, Alajdin. Practice law of obligations, court decisions, principled opinions, and legal Provisions. Pristina: University of Prishtina, 1984.
- Arvenso, B. D. De l'acquisition des servitudes. License, 1866, p. 7. Available form: file:///C:/Users/Lenovo/Downloads/unige_91340_attachment01.pdf.
- Basic Court of Peja, Judgment C.nr. 1461/18, date 13.05.2020.
- Basic Court of Peja, Branch in Decan, Judgment C.nr 215/2018, date 08.12.2020.
- Basic Court of Ferizaj Judgement C.nr.698/19, date 23.06.2020.
- Franch Civile Code: 1582; Georges Vermelle. (2008). The contract, special part (translation in Albanian). Tirana: Papyrus, pp. 12, 41.
- Faber, Wolfgang and Lurger, Brigitta "Rules for the Transfer of Movables: A Candidate for European Harmonization or National Reforms" European Law Publishers GmbH 6, no.1 (2008).

- Galgano, Francesco. Private Law, (first edition - translated from the original Italian by Alban Brati). Tirana: Library of Congress MARC record, 2008.
- Gashi, Haxhi. "Codification of Civil Law in Kosovo: An Analysis of the Main Principles of Book One – General Part of the Kosovo Draft Civil Code" *Zbornik Pravnog Fakulteta u Zagrebu* 72, no. 6, (2022):1219-1258.
- Gashi, Haxhi and Preteni, Bashkim. "Transfer of property based on the property law rules and contract law rules under forthcoming Kosovo Draft Civil Code" *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 42, no. 1 (2021): 151-165.
- Gashi, Haxhi. "Acquisition and Loss of Ownership under the Law on Property and Other Real Rights (LPORR): The influence of the BGB in Kosovo Law" *Hanse Law Review* 9, no. 1 (2013): 41-60.
- Kosovo/Pristina, Republic. Law No. 03/L-154 on Property and Other Real Rights, Official Gazette of the Republic of Kosovo / Pristina / No. 57/2009 August" (2009).
- Kosovo/Pristina, Republic. Law No. 04/L-077 on Obligation Relations, Official Gazette of the Republic of Kosovo / Pristina / No. 16/2012 June" (2012).
- Kosovo/Pristina, Republic. Law No. 2002/5 the amendment and completion of the law on registration of property rights, Official Gazette of the Republic of Kosovo / Pristina / No. 34/2008 August" (2008).
- Kosovo/Pristina, Republic. Law No. 32/2004 on On Family of Kosovo, Official Gazette of the Republic of Kosovo / Pristina / No.16/2012 July" (2012).
- Kosovo/Pristina, Republic. Law No. 2002/5 on the establishment of the real estate rights register, Official Gazette of the Republic of Kosovo / Pristina / No. 34/2008 August" (2008).
- Kotz, Zweigert. Knowledge of comparative law (translated and adapted into Albanian), Oxford: Oxford University Press. 2008.
- Luarasi, Aleks. Civil Code with judicial practice. Tirana: "Luarasi" Publishing House, 2002.
- Nathanali, Andrea. Property law. Tirana: University of Tirana, 1974.
- Nurhidayatuloh, and Febrian, "ASEAN and European Human Rights Mechanisms, What Should Be Improved?," *Padjadjaran Journal of Law* 6, no. 1 (2019): 151–67.
- Nuni, Ardian and Hasneziri, Luan. Civil Right II (Property). Tirana: University of Barleti, 2010.
- Robert, Agustina, Rosa and Nasution, Bismar, "The Rationalization of Debt Discharge Policy for Individual Debtors in Indonesian Bankruptcy Regime" *Sriwijaya Law Review* 6, no. 1, (2022): 101-121.
- Semini, Marina. The law of obligations and contracts. Tirana: University of Tirana, 2010.
- Skrame, Olti. Commentary on the Civil Code of the Republic of Albania (Volume I). Tirana: Library of Congress MARC record, 2011.
- Statovci, Ejup. The right of servitudes. Pristina: University of Prishtina, 2009.
- Statovci, Ejup. Property-legal relations in real estate in Kosovo. Pristina: University of Pristina, 2009.
- Supreme Court of Kosovo, "Collection of the Court Cases in property law" (2019), Judgment of the Municipal Court C. no. 316/2011, dated 05.12.2011; The Judgment of the District

Court, Ac. no. 135/2012, dated 27.12.2012; The Judgment of the Supreme Court, Rev. no. 157/2013, dated 03.06.2013.

The Austrian Civil Code (English version), Chapter 17, about contract and legal transactions in general, Articles 859-937, specifically Articles 861, 865, 878.

The 2012 Law No. 2 on German Civil Code, Title 3, Contracts. Available in: https://www.gesetze-im-internet.de/englisch_bgb/.

The 1915 Law No. 4 on Franch Civile Code, Article 1108.

Voet, Johannes and Rose-Innes, James. *Comentarius ad pandectas*. (Lyon Public Library: Bibliothèque jésuite des Fontaines, 1878.

Vlahna, Kastriote and Kuçi, Hajredin. "Property rights with special emphasis on the right of servitude according to the legislation in Kosovo with a comparative view with some European countries" *Review of International Geographical Education* "Review of International Geographical Education 11, no. 8, (2021): 1761- 1769.

Vlahna, Kastriote and Kuçi, Hajredin. "The Creation of the Right of Real Servitude: Derivative and Original Method Based on Kosovo and Some European Countries" *Hasanuddin Law Review*, 8, no. 2, (2022): 111-121.

Winarsi, Siri "Legal Consequences of Disobedience of Provisional Decision of the Administrative Court" *Sriwijaya Law Review* 8, no. 1, (2024): 1-19.

Wolfgang, Faber and Brigitta, Lurger "Rules for the Transfer of Movables: A Candidate for European Harmonization or National Reforms" *European Law Publishers GmbH* 6, no.1 (2008).