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DEPARTMENT: CIVIL LAW

POST DIPLOMATIC-MASTER STUDIES

THEME:

**POSSESSION**

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Prishtine, November 2011

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## INTRODUCTION

Possession as a law institution, represents a juridical issue protected from the positive right. This institution isn't considered as a property right on the property, because possession is only a fact power on the property. Even though it's not a right, possession produces important law consequences and is a base for the achievement of real rights. The Law for property and other property rights, has accepted the new (German) concept of possession, which enables the increase of the circle of people who own the protection of possession. But, no matter if the will is no longer a constitutive part of possession, it cannot fully be overlooked. It is understood that in the meaning of factual power the will must exist because without it there is no factual power towards an item in relation with other subjects.

Possession presents relationship between man and object, from which it can be created the factual power, but this is not legal power. Legal power over the property belongs only to the true owner. Example in this regard is the relationship between the thief and stolen goods.

All those who have any (property, formal right, pledge, lease, service) rights were authorized on the basis of their right to exercise control over such items. So the owner is entitled to keep the item, to use, gather the fruits, to change the essence of the item. The owner is entitled to keep the item, to use, to take the fruit, but doesn't have the right to change the essence of the item. Holder is authorized to carry the thing but to not use it, let alone to change the essence of the item. So knowing that the ownership is the right to enjoy and freely dispose the item within certain limits implemented by law. The according to the law has two rights the happiness and disposition. While possession it's not that it isn't a right, it is a right of the owner or as a right itself which can have a person who is not an owner. However we should give the legal meaning of these rights: Joy is the use of the item by its economic destination, so the possibility that the owner has to take advantage of the natural benefits of an item or its civil fruits. Disposition is the ability of the owner to determine the fate of the item. But possession is the effective rule in fact the real-material rule of a person over items. Possession, enjoyment and disposition over the item are the owner's rights and in their totality constitute the right of ownership. These are not special rights, but opportunities of the owner arising from a right itself, from the right of ownership.

Although everybody knows the difference between possession and ownership concepts, yet in the common language these concepts are often mixed as such any rich patron we say that he "has hectares and hectares of land" not thinking in possession but on the property.

Most often the owner is also the holder of the thing, because the item in general is in his factual power, but there are situations when the owner loses the factual power over such property, regardless his will, but ownership remains inalienable. The holder of the thing, which does not enjoy the right of ownership, although it treats the item as an owner, he nevertheless is not the

owner, because the real owner being supported in the right of his part, at any time he can take the item from the holder who is not the owner.

Holder in retaining the item can disturb only the person who has a stronger legal basis than him, and that is the owner. The owner can only pull this right judicially.

According to this fact we can conclude the objectives of this study. Therefore the essential objectives regarding the treatment of this theme are:

- The deeper study in the aspects of the recognition of the institute of possession
- The study and analysis of the characteristics of possession
- The study of encountered possession problems
- The study and analysis of normative regulation of different countries regarding the possession.
- The importance and necessity of the existence of possession

Analysis of the theme in this way raises the purpose of the master thesis. Scientific studies in our country related to possession are relatively rare, so I consider that a deeper study of this theme based on laws, judicial practice and scientific doctrine, would be a special contribution regarding this theme.

Especially when after the war in Kosovo we are all witnesses of how many people have taken the factual power, namely the possession of many immovable property (residential and land), thinking that over the years they will have the legal power over them. There have been cases where such persons who have requested a building permission thinking that you are entitled to such a right. These problems have pushed me to deal with this issue, in order to determine scientifically the legal basis of the de-jure profit of the ownership.



## CONCLUSION

Possession is the factual power over such items. In practice there are direct holders who exercise the actual power personally and indirect holders who exercise the factual power over such items through other people. Possession may also be part of the item, such as common areas etc. More people also may have possession of the same thing. Possession is achieved by setting factual power in connection with the item, either simply or in the transmission mode.

Possession is transferred with the delivery of the item, or means by which the winner has power over the item, and the distribution was executed immediately when the winner with the desire of the holder is placed in the position of the holder of power associated with the item. Direct possession will be achieved with the will statement on the delivery of the item to the winner if the owner is in possession of the thing. Possession of service is actually achieved at the time of the action, which represent content of real commodities.

With the death of the testator, the heirs become possessor with objections that the other rights of certain other items should not be affected. In heirs such possession is transferred as the testator had. To achieve the right of property by maintaining it is important the quality of possession of the heir.

The issue of protection can be very complex and in practice can provoke dilemmas when it comes to rigidity of articles and paragraphs of the Law on Ownership and Other Item Rights which regulate the institute.

Possession based on the right legal basis is lawful, and it is real if it's not achieved with violence and breach of trust. Honesty of possession is understood, but the honest possessor who has not indicated or cannot imagine that respectively he is not an honest lawful possessor.

Sustainability (life expectancy) of possession stands until there is factual power over items from the possessor. Top action itself about the obstruction of possession, no matter the way it is achieved, it is prohibited, except actions allowed by law, by court and other bodies.

Law on Property and Other Item Rights provides self-defense for the protection from the obstruction of possession and only by the direct risk conditions and deadlines set by law to file an indictment.

Court provides protection from disturbance of possession under the quick procedure, according to the latest situation, regardless the way of arrival and type of ownership. The right in possession can be verified and protected before the court, regardless of the duration and outcome of the procedure for protection of possession.

Possession and the right of items is intersected when factual power is intersected by the possessor, respectively, on the occasion of the destruction of the item which contains that right or at the time of resignation from the possession right.

The Law on Ownership and Other Items Rights which entered into force in 2009, in connection with the institution's possession containing similar elements almost like LMTHJP81 as well. The same conception of possession is held and regarding with the profit, protection and cessation has no essential differences. For this reason in the future with regard of possession they will again ask the same questions and similar dilemmas will exist as far as now.

But, despite this, it must be said that possession of the item, as well as the right, in postwar Kosovo has created a range of difficulties. This is because there were many illegal possessions, without legal basis, except by conquest.

For this reason not only has come the conflict, but also the possibility of very narrow interpretation of possession as a thing of ownership, understanding this as possession.

However this doesn't stand in practice as well as in the legal theory of possession and ownership. Possession does not mean the right of ownership. Because the ownership we have its title. Even the possession of the advantages of creating the property of the post-war Kosovo should be avoided on account of the equality of subjects before the law for acquisition of the ownership.