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FORM OF GAINING PROPERTY

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INTRODUCTION

Ownership with its right represents one of the most important institutions of the civil right, and is especially the most important institution of the property right. When we talk about property, its importance is seen from the fact that not only it is protected from the legal aspect but also from the constitutional and international aspect.

This paper work aims to review the forms of gaining the property right. Obviously, the form of gaining the property right is human based on nowadays' provisions, according to actual choices. To understand the whole issue, we must be elaborate in the appropriate measure the property issue and the forms of gaining it according to the roman right, which is a fundament of today's private and public right, whose impact is especially emphasized in the private right.

Since the Roman Right, beginning from the Law of XII tables¹, since they were created, from the property right in written form², where in the Law of XII tables, some spheres of the right were regulated which in that time were considered main ones, the proeprty right and the forms of gaining it started to regulate and they continued to perfection the Roman Right in this aspect. By the time passing and the evolution of sciense's right and its study, the civil right, the property right and its form of gaining it has a substantial role in the field of the right, especially in the civil direction.

Gain of the property right presents a normative civil law complex, which regulate the civil law relations of the subjects linked to property.

This theme is of a sustantial importance in the civil right, because it deals with the gain of property right, gain of rights and material values, that convert to economical value and in which, the individual decides property relations.

The methods of elementary research from the selected literature and and law practice that I have used to unbuckle all the institutions of property gain because it is necessary to compile a plan where I must focus on and what this theme aims.

¹ The Laws of the Twelve Tables, c.450 B.C, <http://www.historyguide.org/ancient/12tables.html>

² Livy thotë se ishin shkruara në bronz

Because this paper work reviews the forms of gaining the property right and as we know property is as ancient as mankind, I thought to focus on the research of the Law of XII Tables and the Roman Right, which is a very developed system of right, which has had an extreme influence in the right of nowadays. After this, I have focused on the material and law right of the country and region because it's not only a part of the Property right, but it's also incorporated in all the aspects of justice. For this I have used literature from the Property Right, The Private Right on the Laws for the Property of Kosovo and region, The Right of Obligations, Laws on Obligatory Relations of Kosovo and region, The Family Right and many others, which will be elaborated during this paper work.

In this study, I have used the descriptive method. The descriptive method of research is a study fact that includes the adequate and appropriate interpretation of results. This method aims to describe the actual situation of the right regards to the gain of property. This technique was used to explain and interpret this part of justice.

The use aim of this method is to interpret the actual situation, that we can conclude this issue. That the property right is gained based on law, juridical work and by inheritance, and also based on the decision of the competent state body. To gain property means to have the fact and law power on the property. Property is gained in two forms:

1. derivative gain, titled (Justus tuitulus) is the juridical work, meanwhile forms of gain (modus aquirendi) is the register in public books, when we deal with the rights of estate property .
2. originary gain of the property right or gain of property as free and without any obligation, which means that it's independent from the right of any above title., relatively gain with union and mix, union of land from aluvation, constructing in the land of the foreigner, division of fruit, maintenance, gain with winning and extreme prescription, occupation, giving up from property, invasion and finding the property – property without an owner.

RESUME

As a review object of this paper work, the forms of gaining property. This field is regulated from the ancient right, roman right, right of civil law which our country belongs to, as well. In the Roman right, the public and private forms were regulated according to jus gentium which defined that public forms of gaining property are venditio sub hasta or venditio sub corona-public auction, division of land, judgment in division contests, gain of property with law (ex legia), private forms of gaining property are: mancipatio, in jure cessio, winning prescription (usucapio), long prescription (prescriptio), forms of gaining property according to jus gentium are traditio, occupatio, thesaurus, addition (accessio), compilation (specificatio), mixture of property and embezzlement of fruit. Forms of gaining property (in the Roman right) according to acts of roman lawyers divided in: adquisiones civiles or forms of gaining property according to provisions of the roman right, gain of property of roman citizens. Adquisitiones naturales or Adquisitiones juris gentium were all the forms of mutual property gain for roman citizens and other free citizens of the roman state.

Civil forms of property gain were divided in public and private forms.

According to the object of property gain forms were divided in:

universal - property was constituted on the whole wealth of the individual,

singular – property was constituted on the object. According to the time of act:

inter vivos (during the life of the owner) mortis causa (in case of owner's death).

This paper work reviews all the possibilities which the legislation of the Republic of Kosovo permits the gain of property as in the movable and estate property, for this I have referred to basic laws that actually regulate the issue which is an object of this theme:

Ligji³ on the basis of law property relations “Official newspaper of RFSJ” nr. 6/80 and 36/90, which has changed later on. This law was implementing in means of the Regulation of UNMIK, Regulation for the law in force UNMIK-ut/RREG/1999/24 of 12th December 1999, which was in force since the Kosovan law, respectively Law nr. 03/I-154 for property and other property rights of the Assembly of the Republic of Kosovo,

Law nr. 03/I-154 for property and other rights, of the 25th June 2009, published in the “Official newspaper of the Republic of Kosovo” nr. 57/2009 dt. dt. 29 December 2009, which based on section 297 it entered law in force (15) days after publishing it in the Official newspaper of the Republic of Kosovo on the 14th of January 2010. In juridical reports before entering it in force, the above mentioned Law of RFSJ gets implemented.,

The originary gain of the property right, exists when the base of gain doesn't come from the predecessor, but ased on juridical facts. When we talk about the originary form in these cases we deal with the gain of property baed on country laws, this means that law recognizes the juridical title as sufficient for the gain of property. Juridical titles for the gain of property in originary form are: occupation(Occupatio), finding the lost object, finding the hidden treasure, usurpation, consolidation, gain of property based on the administrative permit, gain of property from the non-owner, winning prescription, creating the new object, union, confiscation, nationalism and denationalisation.

Forms of property gain in derivative form, are:

Gain of property right in derivative form is that gain of property right from the prodecessor of that property.

³KyligjishteiaplikueshëmnëkuptimtëRregulloressë UNMIK, Rregullorespërligjinnëfuqi UNMIK/RREG/1999/24 tëdatës 12dhjetor 1999, icili ka qenëëfuqiderikur ka hipurnëfuqiligjikosovar, përkatësishtLigji nr. 03/I-154 përpronësinëdhjetëdjathtërasendoreiKuvendittëRepublikëssëKosovës.

For the gain of the property right in derivative form ⁴are needed three presumptions: property of the prodecessor, titulus respectively the juridical work⁵, testament etc. As a valuable juridical base. modus or gain forms, in movable tradicio or delivery⁶ in possession, meanwhile in estate register⁷ in the respective relevant public book. These conditions must be fulfilled cumulatively.

Derivative gain of the property right is that gain where its owner releases and gains the right from the property right of his/her prodecessor.

In the winner of the property right except possession, there are the burdens of it as real easement, mortgages and other takes.

Derivative gain is mainly based on juridical work.

⁴http://www.nasciturus.com/enciklopedija/index.php?title=Derivativno_stjecanje_prava_vlasni%C5%A1tva

⁵Neni 36, Ligji nr. 03/I-154 për pronësinë dhe të drejtat tjera sendore i publikuar në “Gazetën zyrtare të Republikës së Kosovës” nr. 57/2009 dt. dt. 29 dhjetor 2009, i cili ka hyrë në fuqi më 14 janar 2010. .

⁶ Neni 21. par. 1 Ligji nr. 03/I-154 për pronësinë dhe të drejtat tjera sendore i publikuar në “Gazetën zyrtare të Republikës së Kosovës” nr. 57/2009 dt. dt. 29 dhjetor 2009, i cili ka hyrë në fuqi më 14 janar 2010. .

⁷Neni 36, Ligjin Nr. 03/I-154 për pronësinë dhe të drejtat tjera sendore, i dt. 25 qershor 2009, publikuar në “Gazetën zyrtare të Republikës së Kosovës” nr. 57/2009 dt. dt. 29 dhjetor 2009.

Property right gained with inheritance, based on testament, is also treated as a derivative form of the property right gain. The gain of property right in derivative form according to the base of will inheritance is distinguished from other cases of derivative gain of property right, because it is gained in the moment of opening inheritance and the act of handing in the property in possession and neither its register in public books, isn't necessary. Even though in this case, possession is gained *iso jure*, the gainer of the right has a juridical interest to register the property in public books, in our country in the register of rights in estate as defined in section 115. of the Law nr. 03/L-154 for possession and other property rights⁸.

Derivative gain of property is a gain of the property right from the predecessor.

Therefore, as following, we will mirror the derivative forms of gaining property rights based on juridical work, mainly based on contracts, whose purpose or cause is the gain of the property right, respectively the transmission from the property right of the juridical predecessor to the descendant, the gainer of the property right in derivative form.

According to this base for the gain of the property right in derivative form, it is required:

The juridical base of gain, *iustus titulus*, and forms of gain, *modus acquirendi*.

After gaining the possession, the forms of property gain are required too, or *modus acquirendi*. The delivery in our right is preserved only for movable property.

Forms of gaining estate property is their register in relevant books in the name of the gainer, which is a mandatory register in means of provisions of the Law for the establishment of the register of the rights of real estate, modifications and fulfillments - nr. 2002/5 and 2003/13 and 04/L-009 declared on 03.08.2011 "Official Newspaper of the Republic of Kosovo" 7/ 10.08.2011.

⁸, Ligjin Nr. 03/L-154 për pronësinë dhe të drejtat tjera sendore, i dt. 25 qershor 2009, publikuar në "Gazetën zyrtare të Republikës së Kosovës" nr. 57/2009 dt. dt. 29 dhjetor 2009.

