Acta Universitatis Danubius

JURIDICA

Historical-Legal Aspects of the Influence of the Canons in the Treatment of Servitudes in Kosovo

Berat Aqifi[1], **Ardian Emini**[2]

Abstrac: In this paper we will analyze the institute of law services in a broader historical-legal point of view, seeing it closely related to the principles of law in general, and Albanian customary law based on the Canons that acted in the face of a very large influence of the Roman law of that time, of the Byzantine Empire ("Nomos Georgikos"), of the laws of Ottoman law ("Sharia law"), which exercised their activity, and which had for conse-quently their influence in the areas where Albanians lived. Given the importance of the servitude as an integral part of the right to property, the circumstances in which it was created, the way it evolved since ancient times influenced by Roman law and the Albanian Canons, where you learn to important also in our law in particular, although it was not created by the right of ownership, it became an important derivative of it. From this paper we will try to give some answers due to some ambiguities that have influenced to date in the historical-legal aspect in the right of ownership in our country, regarding the shortcomings of the legal framework of real rights on foreign items to provide solutions to numerous cases and problems that arise in practice from their implementation influenced by the Albanian customary law transferred through the Canons. Of particular importance are the legal norms in the civil field, especially in the field of property rights and inheritance created in certain historical and geographical circumstances and conditions, where this right acted, also influenced the preservation of some features and elements of national nature. , in the face of the risk of assimilation and the numerous influence of foreign law. Of course, special attention is paid to the "Canons", as part of a special extension and value of Albanian customary law.

Keywords*:* Canons; law; Roman law; servitude; usufructus

[1] Assistant Professor, Faculty of Law University "Ukshin Hoti", Prizren, Republic of Kosovo, Address: "Zija Shemsiu" pn. 60000 Gjilan, Republic of Kosovo, Corresponding author: berat.aqifi@uni-prizren.com.

[2] Senior Lecturer, Faculty of Law University "Ukshin Hoti", Prizren, Republic of Kosovo, Address: "Zija Shemsiu "pn. 60000 Gjilan, Republic of Kosovo, E-mail: ardian.emini@yahoo.com.

1. Introduction

When it comes to real rights over foreign objects, especially the institute of servitudes, we are dealing with a topic that is often in the daily life of the time we are living in and that is often unclear to many people, imposes a certain need for services in foreign property. Historically, usufructus is thought to have developed during the third century BC as one of the means of ensuring the existence of family members, especially women who for some reason remained widows (the loss of men in war) or to unmarried girls, by means of a leg (legatum usufructus), which lasted until the time when (in Byzantine times) when usufructus, usus and habitatio, were "transformed" into servitudes. Only in Justinian's law were fruitfulness and other personal servitudes absorbed into the extended concept of servitudes, as personal servitudes. Ancient Roman law in a way recognized the right of servitude (LXIIT), but did not elaborate sufficiently and sufficiently developed the notion of servitudes, especially with regard to the determination of the legal nature, content, or means of their legal protection. adequate. The reason was because ancient law did not recognize a definite and precise notion of ownership.

As a regulator of social relations, he has made it possible in the legal context with his provisions to regulate some areas of family law, expressed in institutes such as: birth, engagement, marriage, rights and obligations within the family. Likewise, the treatment of civil law institutes: property, inheritance, liabilities, trade, sale, tram, lease, loan, bail, pledge, hood, usury and damages.

2. The Notion and Division of Servitudes

As a very important institute, known since ancient Roman law as regulated by the Law of XII Tables, [T7-Tabula septima: De iure praediorum], "The servitude was a property right that included the use of property within itself. another person; one can be called the right of way (through the property of the other)" (Borkowski & Plessis, 2004, p. 68).

So much so that it is an old institute which was precisely regulated in Roman law and which was later influenced by the rights of many states, because at that time in Rome, due to the lack of administrative definitions of private property, servitudes constituted one of the main regulators of special importance, especially in the field of property rights or property rights. European legal systems derive from Roman

law, which over the centuries had been adopted towards various economic and social systems (Llozano & Grandi, 2018, p. 47).

On the other hand, from the point of view of the holders of the right of servitude, the servitudes were defined as real rights over foreign objects, that the holder of that right had the authorization that free of charge, in full or in part, during the whole life and even by inheritance to use the foreign object or to ask the owner not to use this object in a certain way[1].

The servitudes are real rights over the foreign thing, so from their very naming it turns out that in order to be a real servitude there must be at least two things, which must be immovable and belong to different owners. These items should be in a relationship of dependence with each other, where one item is used to serve the other item or in order to increase the usefulness of the other item. Thus, for the existence of the right of servitude, there must be two immovables, the service immovable property and the dominant immovable property, so it follows that there can be no servitude over its own thing. The holder of the right of servitude has no right to request from the owner of the service item to perform any action, except patience and restraint, unless otherwise provided by law or any other act. From the servitudes are created, on the one hand, the relationship between the owner and the holder of the servitude and on the other hand, the relationship between the holder of the servitude and third parties. The holder of the easement has the authority to act against all (*erga omnes*).

Although nowadays the number and importance of servitudes has been significantly reduced, some restrictions on ownership, through administrative acts, implementation of regulatory plans and detailed general and urban plans, the Law on Property and other property rights in Kosovo.[2]

[1] The essence of the right of servitude, Roman jurists expressed in this form: "Servitutes ipso quidem jure neque ex tempore neque sub condicione neque ad certam condicionem [verbi graita „quamdiu volam"] constitui possunt "(D 8, 1, 4 pr.) ose "Servitutium non ea natura est, ut aliquid faciat quis, veluti viridia tollat aut amoeniorem prospectum praestet, aut in hoc ut in suo pignat sed ut aliquid patiatur aut non faciat". (D 8, 1, 15, 1)

[2] Official Gazette Of The Republic Of Kosova / Pristina: Year Iv / No. 57 / 04 August 2009; Law No. 03/L-154, On Property And Other Real Rights, Assembly of Republic of Kosovo, Based on Article 65 (1) of the Constitution of the Republic of Kosovo, 25 June 2009; Promulgated by the Decree No. DL-016-2009, dated 15.07.2009, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu.

Types of Easements

The servitude is a real right over the foreign thing - jura in re aliena, so there can be no servitude over its thing. The term servitut is derived from the Latin word servitus which means to serve (Rrustem, 2011, p. 207). The servitudes are divided into real servitudes and personal servitudes.

2.1. Real Servitudes

Thus, for the existence of the real servitude, there must be two immovable properties: the domain property, which is served by the use of the other property, and the service property, which serves the dominant property. The servitude is created on the basis of a legal work, a decision of a state body or by law. Real servitudes are innumerable; the forms in which they appear are unlimited. Meanwhile, personal servitudes are presented only in certain forms. Historically, the real servitude is older, and even the oldest servitude is the land servitude, which in classical Roman law was known only as the land servitude. The servitude may be terminated by contract, denunciation and over time if it has been constituted for a certain period of time, by the destruction of the thing, by decision of the state body, by merger or by non-exercise of this right. Personal servitudes are property rights in favor of a certain natural or legal person.

3. Real Servitudes According to Albanian Canons

At the time of the actions of the Canons in the circumstances of a feudal economy, where the main place was occupied by agricultural products with cereals, lentil cultivation, olive cultivation, viticulture, beekeeping, as well as livestock, especially in sheep breeding, etc. Based on these facts and the continuity of the professions of the growing time, where feudal ownership was extended over the pastures of mountainous areas, as a result, where the inhabitants of the deepest mountainous areas were engaged in agriculture, has resulted in the construction of dwellings. near the land of bread scattering dwelling. The population of Albanian villages has been sedentary, has been engaged in tillage, beekeeping, viticulture and fishing (Merlika, 2018, p. 53). Like other ancient rights of other peoples, especially in the Balkans, Albanian customary law, according to Lekë Dukagjini's Kanun, recognizes the fruit-growing institute, which is mainly concerned with the guarantee of the life of members of the Albanian family, and that in the case of

marital relations, which entitles the widow to live. All this affected the Albanian customary law where expressive rules could be found in the form of servitudes, by which the owner was forbidden to use his land freely, so that it could be reflected in the land of another. Thus the Kanun of Benda[1] predicts that "the house should be built so far away that the roofs of the house do not fall to the ground of the other".[2] The Kanun of Kurbin states that: "If they first passed through generation after generation, there is no right to close the crossing"[3] According to Albanian customary law, the acquisition of real estate servitude is done through legal action (contract, sale, donation, etc.), the winning prescription (usucapio) and based on the decision of the elders (Statovci, 2009, p. 185). The right of servitude is an absolute real right. It acts against everyone (erga omnes). However, the Kanun of Sula regarding the regulation of usufructus-fruiting according to its rules, was a major step due to the more developed degree of production relations, as well as social relations in general.

3.1. Ways of Creating and Terminating Real Servitudes according to the Law in Kosovo

A servitude is a property right over a foreign thing, iura in re aliena, which makes it possible for the holder of the servitude to use the foreign thing in a certain way. So, for real servitude to exist, there must be two immovable properties: the dominant property, which is served by the use of other property, and the service property, which serves the dominant property. In our positive right as property rights over the foreign thing are, the right of servitude, the right of pledge and the real burden (Aliu, 2014, p. 141).

The provision of Article 253 of the Law on Property and Other Real Rights stipulates that real servitudes are created on the basis of a legal work, a decision of a state body or a law. The real servitude, according to the legal work, is created

[1] Canon of Bendes: Regarding the implementation period of the Kanun rules Bendes, according to many authors have no direct documentary evidence, but referring to data which indicate implementation and solution according to the rules of this canon, da from the 14th century onwards, which operated in much of Albania. Given that all the provinces of that time lived in economic and social conditions of the Albanian villages (Benda Province in this period 56 is registered with 15 villages with 77 families. It is located in the eastern and southeastern part of Kruja.) As a whole are documented with cadastral data, namely Ottoman and Venetian adminrata singa records of the years 1416–1497 etc.

[2] Canon of Bendeta, pp. 78-85.

[3] Canon of Kurbin, pp. 53.

based on the contract and the registration of the same in the Register of immovable property rights[1].

The owner of the dominant property is obliged to reward the owner of the service property for the created easement (Nuni & Hasneziri, 2010, p. 321). The holder of the dominant immovable property must exercise the servitude in such a way that the service immovable carries the smallest possible load. If dominant real estate is shared, the easement continues to remain for separate parts. The right of servitude as it is created can be extinguished, so it is necessary the declaration of the owner of the dominant immovable property for the renunciation of the real servitude and the registration in the Register of real estate rights. The owner of the encumbered immovable property may also request the settlement of the real estate servitude, if the servitude is no longer necessary for the use of the dominant immovable property. The redemption of the servitude must be registered in the register of real estate rights. The servitude may be terminated by contract. Thus the owner of the service item and the owner of the dominant item can agree on the termination of the servitude (Statovci, 2009, p. 253). The servitude may be extinguished by denunciation even silently, when the holder of the servitude allows such changes in the service item, which impede the exercise of the servitude, or when the usufructuary allows the service item to be realized. Over time if it is constituted for a certain period of time, with the destruction of the item. The real servitude is extinguished by a decision of the state body, it is extinguished by unification, by not exercising the right of servitude, etc.

3.2. Personal Servitude

In Justinian's law personal servitude had a total of four. Fruiting (usufructus) was the right to use and use the fruit and profit from the thing which is owned by a foreigner, movable or immovable, without substantially changing the thing ("ius alienis rebus utendi fruendisalva rerum substantia"), Usus (the right of use), as its name suggests, is part of the fruitfulness, which authorizes its user to use it, but not to collect the fruit or property. Habitatio (the right of residence) and the opera servorum, were nothing but a modification of the usus, which had to do with the banas, that is, the services of the slaves (Nicholas, 2009, pp. 143-144).

[1] Neni 253, i LPDTS.

Theoretical Reviews on the Origin, History and Notion of Personal Servitudes.

Personal servitudes, unlike real or real ones, according to many authors can be treated as real rights between each other that are distinguished by certain characteristics and are independent of each other. Traditional Roman law recognized four typical forms of personal servitude, such as: Usufructusi, usus (use), habitatio (lodging, habitation), and operae servorum (slave services). Personal servitudes were created on real estate lu land and movables. They were personal because they had nothing to do with establishing a close relationship with the person, not with any land or property, they were limited in time and were not always established. Also, the cases that were most frequent of creation were testamentary forms, as a means of dividing the property between the family members of the testator. ***The voluntary acquisition of a usufruct as a way of obtaining the lifelong benefits of a widow or other family member (as in the case of an unmarried daughter, for example) was a common occurrence in Roman wills*** (Borkowski & Du Plessis, 2004, pp. 237-238).

In addition to the "operae servorurn" servitude that was extinguished with the abolition of slavery, other Roman law servitudes survived the time and were systematized and accepted into the systems of law up to modern ones, whether the French or continental system as well as the pandext or Anglo-Saxon law. However, there were opinions that of all these servitudes, only fruiting arose in a general right, but this "rise" also occurred with usus and habitatio. The latter two have been treated only as a modification of the right of usufruct, or, in our law influenced by German law only usufruct was treated as a "complete personal servitude", while usus and habitatio continued only as servitude. "limited" personal. The term servitude was used only for real servitudes, while the so-called personal servitudes were used only with their name as usufructi, usus and habitatio (Hoxha, 2017, p. 59).

3.2.2. Separation of Personal Servitudes

Personal servitudes are of three types: usufructus, usus, and habitatio. The legal doctrine, based on the earlier studies of many Roman and other jurists, recognizes personal servitudes (servitutes personarum), and from these servitudes are divided into many other servitudes, which over time lost the reason for their existence. The division in the real servitude and in the personal servitude is done regardless of the fact that a foreign thing is used or used for the benefit (interest) of a current owner

of an immovable thing, or for the benefit of a person. Personal servitudes can also be treated as separate and independent real property rights that have very little in common with real servitudes, as well as the servitudes themselves. Personal servitudes in the classical period of Roman rule were formed as an independent real right over a foreign object. Personal servitudes only in post-classical law and in the time of Emperor Justinian were included in the servitude, received the title as servitute personarum, and over time, especially in the period of the pandekists, the general notion of servitude was finally formed, as a unique right. real estate in a foreign item[1].

Today, the traditional division into real servitudes and personal servitudes is adopted by many states as well as modern civil law, just as this division is made by civil science on servitudes, where some states in their legislations and codes treat the servile per-sonal as a servitude to a foreign thing and as a separate property right.

4. Similarities and Differences between Personal and Real Sevites

Given the many differences with real estate, for a long time until the period of Justinian they were not even part of the easement, but the lesson about these is still within the scope of easements, based on them because personal easements do not they arise simultaneously with real servitudes and neither their development nor being are related to real servitudes. Although we are dealing with a very important institute in the civil field, as well as despite the developments that have occurred over time in jurisprudence based on studies that have not stopped in the civil-legal field, it can be concluded that there are similarities and differences between personal sevites. and items that we will single out:

- What is common is that both real and personal servitudes are real rights over the foreign object - iura in res aliena;

- The object of the real servitude is only the immovable objects, while the object of the personal servitude is also the movable and immovable thing;

[1] M Planiol, Traité élémentaire de droit civil conforme aux programme officiel des facultés de droit (9... - 1922-1924 - Page 9; Marcel Planiol (23 September 1853 – 31 August 1931) was a French professor of law at the University of Rennes, then at the Sorbonne. He wrote on the law and on historical Brittany. He is known for his Elementary Treatise of Civil Law (1901), which attempted to explain French civil law in terms of elementary principles, particularly the maxims of Roman law.
23B., Benussi, “His belongings, possession and modifications”, pp. 157

- The foreign object is always used or exploited in a certain way and direction;

- The current owner of the service property cannot be obliged to do so, but only in inaction and non-action;

- Personal servitudes other than fruiting, other servitudes are not alienable;

- Personal servitudes with the exception of fruiting, from other servitudes cannot be created in servitudes;

- Servitudes as rights over the foreign thing, according to the volume and content, are limited rights, are created voluntarily and serve for each owner (possessor or detentor (holder), etc.).

- The real servitude is created for the benefit of a real estate mainly, for the benefit of the current owner of a real estate as an active part, while the personal servitude is created for the benefit of a certain person, as a passive party or who endures something;

- The content and volume of the real servitude is not directed to the direct use by the holder of the servitude, but only indirectly, while the content and volume of the personal servitude is directed to the direct use by the holder of the servitude in the foreign thing;

- Real servitudes in principle are permanent, while personal ones are limited in time and are closely related to the life of the holder of the servitude;

- Possession of a personal servitude item belongs to the holder of the servitude, while in the real servitude, the current owner of the service item usually owns it, because the forms in which the real servitude appears are not defined, expressly defined (nor limited).) in number, while personal servitudes are defined in number, there are only three (fruiting, right of use and right of residence) etc.

- Real servitudes are hereditary, while personal servitudes, except in exceptional cases when provided for in the contract, are hereditary: Real servitude is an inalienable right, while personal servitude, in principle, is a divisible right (Arjan, 2017, p. 59);

4.1. Usurfruct (*ususfructus*)

Of all the personal servitudes for modern civil systems in Kosovo as well, the most important is the institute of usufructus or fruit growing.[1] The orchard owner is entitled to the full use of all the fruits of the item (ius utendi, fruendi, salva rerum substance), whether movable or immovable. Fruiting on an item can be created by legal action or without the will of the owner or by will.

3.2. Fruit Growing according to LPDTS-Kosova

Definition of a usufruct explicitly also defines Kosovo LPDS provides icili :, "An immo-vable property or movable property can be charged so that the person (user) for the benefit of which is loaded object, has the right to use and t 'reap all the benefits of the item without compromising the substance of the item.[2]

Fruiting in connection with the provision of life of family members is expressly provided for under Albanian customary law. The canon of Lekë Dukagjini gives the right to fruition: "the widow without sons in the husband's land until she is alive". Idriz Suli's canon talks about fruiting, talks about life insurance ("father door, husband door")[3].

Fruit growers are entitled to the full use and all fruits of the item (ius utendi, fruendi, salva rerum substance), whether movable or immovable, including the means (interest and principal). The ways of creating usufruct-fruit-bearing, based on Roman law, treat them almost in the same way and that: The usufruct on an object can be created either by the will or without the will of the owner, by legal action or by will[4]. Article 220 of the LPDTS stipulates that: a usufruct can be established on the basis of a contract or a court decision. According to the contract, the usufruct is created on a movable item, so that the owner hands over to the usufructuary, where both have agreed that the usufruct is transferred to the usufructuary, while for the creation of usufruct on an immovable property a notarial deed is required. that the owner and the usufructuary intend to establish the usufruct and register the same in the Immovable Rights Register. By using the item, the fruit grower cannot change the economic definition of an item, he can

[1] Digesta Iustiniani 7.1.1.pr.1: "Usus fructus est ius alienis rebus utendi fruendi salua rerum substantia".
[2] Law on Ownership and Other Property Rights, Article 218.
[3] Idriz Suli's Kanun, document no.33-39.
[4] A. Shehu, ownership, Tiranë 2000, pp. 74.

only harvest the fruits that the item gives him, ie the natural ones and the civil ones (the rent) that the item produces during the continuation of the fruiting period. The orchard owner is obliged to maintain the item in such a way that its substance is not damaged. So, for repairs and repairs to the extent that they belong to the usual maintenance of the item, but is not obliged to take care of extraordinary repairs and repairs, but is obliged to allow the owner to undertake those repairs or repairs. If the usufructuary is not obliged to incur expenses related to the item and he nevertheless makes them, he may claim compensation from the owner according to the provisions for the extension of foreign affairs without order (**negotiorum gestio**). The fruit grower, as long as the fruiting lasts, is obliged to pay all regular public payments related to the item, such as taxes and fees, as well as the loads on the item which were created at the time of the establishment of fruit growing, especially interest in claims by mortgages and land taxes. Fruiting is not permanent, it can be acquired as a personal servitude and can be extinguished. In LPDTS. the usufruct is extinguished: with the death of the usufructuary, if it is a natural person, with extinction if the usufructuary is a legal person, with the renunciation of the usufructuary.[1] Comparative law also provides for the possibility of extinction of fruit-bearing due to misuse (misuse, abuse) of fruit-bearing. And finally, when the fruiting is extinguished, the fruit-bearer is obliged to return the thing to the servant owner, putting it in "free" ownership, and with this his right to fruitfulness finally ceases.[2]

5. History of Usufructus

Fruiting has historically developed among other ancient peoples, but it is assumed that usufructus developed during the third century BC, as one of the means of ensuring the existence of family members, especially women who for some reason there were widows (the loss of men in the war) or unmarried girls, by means of the leg (legatum usufructus), which lasted until the time when (in the time of Byzantium) when usufructus, usus and habitatio, were "transformed" in servitude. Only in Justinian's right did fruitfulness and other personal servitudes be absorbed into the extended concept of servitudes, as personal servitudes, where fruitfulness had to do with the testament left by the widow, with the right to use her inter vivos items. Given that ancient Greece was also known for the first schools of law, it was the rule that the common assets of the city-state (Greek Police) could be used by

[1] Law No. 03/L-154 On Property And Other Real Rights of Republic of Kosovo , article, 235 - 236.
[2] Ibid,. 380.

the citizens, but not appropriated. In ancient Babylonian law in the Code of Hammurabi, fruiting was termed "ikkal", which was dedicated to the joy of frugality. According to the fruitfulness, the unmarried daughter (daughter) can enjoy only the life that her father has given her, but not alienate it (adi baltak ikkal), because it belongs to the brothers. Or, the widow who has received dowries and gifts for marriage (seriktum and naditum), had the right to fruitfulness for their living, while living in the husband's house, but did not have the right to alienate, because they are inheritance of children, preservation of forest for wood, etc (Hoxha, 2017).

Ancient Jewish law, on the other hand, had an expression for fruitfulness, which was called "akal" - the freezing of fruits or the joy of fruits). The eating and rejoicing of the fruit was equated with the Latin expression utere used by Justinian.

5.1. History of Usufructus- according to Albanian Customary Law[1]

Albanian customary law clearly provides for fruitfulness, which had to do especially with the provision of life for family members, allows the provision of living for the widow and so on. According to some authors dealing with the study of canons and customary law in general, they considered that: "Albanian customary law contains norms of tribal patriarchal order (from Illyria), feudal patriarchal (medieval), as well as new norms, in adaptation to the development of socio-economic relations in the nineteenth century and early twentieth century. Albanian customary law, inherited from the Illyrians and throughout the history of the development of Albanian society, especially during the Middle Ages, when Albania was under Ottoman occupation (XV century to early XX century) was not static, but changed, forgetting old norms and enriching themselves with new norms, but not assimilated by the laws of foreign invaders" (Elezi, 1999, p. 326).

[1] The Albanian customary law known as Kanuni is also called "Old Law", "Ancient Laws", "Mountain Laws"; "Law of Laws", "Old Kanun", or is called by special names such as "Kanun of Lek Dukagjini", "Kanun of the mountains", "Kanun of Skenderbeu", "Kanun of Mirdita", "Kanun of Malesia e Madhe ", "Kanun of Martanesh ", "Law of Dibra ", "Kanun of Çermenika or Must Ballgjin ", "Kanun of Kurbin ", "Kanun of Labëria ", "Kanun of Papa Zhuli ", "Laws of the Sword ", "Idriz Suli's rules ", "Kanun i Çamëria "etc.

Kanun of Lekë Dukagjini

The popular tradition gathered and passed down from generation to generation by local and foreign writers of Albanian affairs, claims that the Kanun is the work of Lekë Dukagjini, who lived in the 15th century, who created norms and codes which he coded the least. gathering them among his subjects, who have come down from generation to generation to this day.[1]

As an important historical fact, which confirms the ancient origin of the Kanun, as a continuation of the Roman-Illyrian-Byzantine codes, or rather a synthesis of the Code of Justinian, applied in the Illyrian-Arberian territories, in Book IV where the issue of property is regulated by private law rules relating to servitudes. The Kanun of Lekë Dukagjini is one of the main bases that regulates the institute of usufructus-fruiting, perhaps also due to social, historical circumstances, etc. According to the Kanun, given fertility, it entitles "a widow without sons in the land of her husband, until she is alive." According to the Kanun, it is determined that the widowed woman also belongs to him: "The husband's land will give him the bread of the mouth - three burdens of grain, for years to come." The widow, without sons, but who has married daughters, has the right to live in the husband's tribe. But the right of fruiting in the land of the husband belongs to him even when he does not live (reside) in the husband's plan, but in one of his daughters or his parents. In the plan of the husband, he has the right to live even that widow who has no children. Another special aspect of the Kanun is the right it gives to the son in relation to the mistakes of the mother. Only the son could take his mother out of the house when she was behaving badly, but giving him food for a whole year (usurfructus).

Canon of Bendeas (Merlika, 2018, p. 67)

An important place in this Kanun is occupied by some rules related to the importance of ownership and inheritance. The Kanun stipulates that every house has its own properties, and the house itself is property, but also other properties, such as: fields, meadows, forest, grove and any other property that belongs to it according to the law. An important place is occupied by the rights of the owner of the goods (the right of ownership), in which principles of civil law deriving from Roman law are expressed, such as "property belongs to its owner, valuing it as an

[1] K. Xhuzepe , "Customary law, society, law ". (Customary norms and social life in the Albanian highlands according to the Kanun of Lekë Dukagjini), 13

absolute inalienable and unpredictable right ", where it is concretely stated:" Good has a god, if it wants to work, if it wants to leave it barren. He does whatever he wants with his goods. " According to the Kanun, marriage can be dissolved with the death of one of the spouses, but provided that the bride in the event of the death of the groom stays in the husband's house for up to three months and ten days, even if the death occurred on the day of the marriage (Goci, 2010, pp. 47-54).

Canon of Kurbin

The Canon of Kurbin, although presented later, regarding the rights of subjects expands the circle of subjects that have the right of usufruct-fruiting. The canon, in turn, recognizes and regulates fruiting, associating it with the widow. A widowed woman who has no son has no right to dispose of her husband's immovable property. These remain in the inheritance of the husband's brothers (her brothers-in-law). It belongs to the woman alone and the right to usufruct - to live happily ever after. Also, this canon regulates that: "All members of the husband's property have the right (must: obligation) to feed and give each member three burdens of grain"). If the father of the family is a bigamist, both women are entitled to equal usufructus-fruitfulness. Likewise, the woman who has no children. ("So is the other woman - both equally").

The Canon of Labëria or Idriz Sulit

The Canon of Labëria or Idriz Sulit[1] it is a summary of the unwritten norms of customary law that have operated in the provinces between the three bridges: Drashovica, Tepelena and Kalasa. The oral tradition connects the canon of Labëria with the name of Pope Zhuli, the founder of the village Zhulat (Gjirokastra). Later, around 1840-1850, some changes were made to the old canon of Labëria, known as: "Idriz Suli's Shartet". The timing of these changes reflected the feudal ruling

[1] The Kanun of Labëria is a summary of the unwritten norms of customary law that have operated in the provinces between three bridges: Drashovica, Tepelena and Kala. The oral tradition connects the canon of Labëria with the name of Pope Zhuli, the founder of the village Zhulat (Gjirokastra). Around 1840-1850, some changes were made to the old Kanun of Labëria. These changes are known as "Idriz Suli Shartet". The changes reflected the ruling feudal relations and corresponded to the interests of the aghallars, the ruling feudal class. Meanwhile, they opposed the laws and judicial system of the Ottoman invaders as well as the Tanzimat reforms. The Kanun of Labëria was collected, but not codified. Its norms are generally the same as those of other canons. http://www.gazetadita.al/cfare-eshte-kanuni-i-laberise/.

relations and responded to the interests of the aghallars as a feudal ruling class and opposed the laws and judicial system of the Ottoman invaders as well as the Tanzimat reforms made at the time. The Kanun of Labëria was collected, but not codified. Its norms are generally the same as those of other canons, but unlike that of Lekë Dukagjini and Kurbin, as we pointed out above, were the "nuclei" of the regulation of the fruit-bearing institution, this Kanun is made in a more modern way of fruiting. , due to the higher degree of development of society and customary law. However, it is clear that the regulation of fruit growing, within the customary law of Albanians, is not of the same degree (Castelleti, 2009, p. 24). Idriz Suli's canon talks about fruiting, talks about life insurance ("father door, husband door")[1].

The norms of customary law convincingly prove the independence of the development and origin of fruiting from the right of ownership and the right of real servitudes, as well as from other real rights (Hoxha, 2017, p. 63).

5.2. Right to use (Usus)

Influenced by the French Civil Code, our right also defines "use" or "usus" as a personal servitude, where a person has the right to use a foreign object to meet the needs of himself and other family members. on a certain surface, without damaging the substance of the item, ie. valid only for the holder and his family members. Given these characteristics, we can conclude that the difference between usifructus-fruiting and the right of use has to do only from the quantitative point of view, which means that the holder of the right of use uses the thing only for his own needs and that of members of his family and cannot behave with the thing as the usufructuary had the right, who can also rent the thing, respectively to pass on to others the exercise of the content of the usufruct (Aliu, 2004, p. 172). Later, as today, with usus, not only is the foreign object used, but also the collection of fruits necessary for the user and his household is done (Statovci, 2009, pp. 312-313).

5.3. The right to housing (Habitatio)

A special type of personal servitude is the right of residence which is established as the right of a person to use the foreign object, in a building or a part of the building, to meet his and his family's needs, without harming him. the substance of the item itself. The exercise of the right of residence cannot be transferred to another

[1] Idriz Suli's Kanun, document no.44/4, 33-39.

person. The provisions of the LPDTS shall apply mutatis mutandis to housing law[1], regarding usurfruct.

In copyright law, the right of residence is created on the basis of human will, by legal action inter vivos, by legal action mortis causa (will), and by court decision (Statovci, 2009, p. 324). Since it is a question of two institutes with rights similar to usufruct, the right of use and residence cannot be exercised, unless a guarantee and inventory of movables or the description of immovable property has been given in advance, except as the case may be. when allowed by the court on the grounds that they are created for charitable purposes.

Conclusion

- Today, in these contemporary circumstances and conditions, it is thought that much greater importance is being paid to fruit growing, as a real right over the foreign thing, based on which the holder has the personal right to use the other's thing and I enjoy its fruits mostly for its living, not compromising its substance and economic destination. Fruiting in connection with the provision of life for family members is expressly provided for under Albanian customary law.

The servitude played an important role in the context of private property relations, although as a subjective property right in a foreign object, it has its role and character, like any other civil right., The servitude was born, existed and became developed as an independent right, it was not derivative, it was not detached, it was not "crippled" by ownership: its origin is original, independent, but not derived from ownership.

It can be freely ascertained that personal servitude (usfructus) has nothing in common with servitudes, except that they are Iura in re Aliena and that they have a protection similar to real servitudes.
In this context, this proves the concept that fruitfulness is not, in fact, the right of servitude, just as fruitfulness is not a form of ownership, complete or truncated, its own and that it did not derive from it, as that is not detached from it.

- Usurfruct as an institute recognized since Roman law, developed especially during the third century BC with the sole purpose of ensuring the existence of family members, such as widow or unmarried daughter, as a *legatum usufructus*.

[1] Neni 264 i LPDTS.

Albanian customary law, as well as other ancient rights of other peoples, allows the life insurance of the widow to be expressed through: the Kanun of Lekë Dukagjini, the Kanun of Kurbin, the Kanun of Labëria-Suli, but with certain changes regardless of in which provinces those canons were descended.

According to customary law, as well as ancient law in general, it does not appear that fruit-bearing is any "collapse" of the right of ownership, nor any disruption of property authorizations, as it is not even a detachment of any proprietary authorization, in order to form a special right of the institution to be formed, developed and established in a separate right, on a foreign object.

So, from all the above, it results that: Ownership, not only needs to be cleansed from the possession of an item, but also from the use (exploitation) of an item, as well as from the enjoyment of its fruits.

References

Borkowski A. & Du Plessis P. (2004). *E drejta romake/ Roman law.* Pristina.

Llozano M & Grandi, I. (2018). *Sistemi Giuridici/ Legal Systems*.

Gjata, Rr. (2011). *E drejta civile, Sendet dhe Pronësia/ Civil Law, Property and Property*. Tiranë.

Merlika, R. (2018). *Kanuni I Bendës, Pjesë E Së Drejtës Zakonore Shqiptare/ Kanuna I Bendës, Part of Albanian Customary Law*.

Statovci, E. (2009). *E drejta e servituteve/ The right of servitude*. Prishtinë 2009.

Aliu, A. (2014). *E drejta Sendore/ Property Law*. Prishtine.

Nuni dhe, A. & Hasneziri L. (2010). *E drejta Civile II- Pronësia/ Civil Law II- Property*. Tiranë.

Statovci, E. (2009). *Drejta e servituteve-Aspekte komparative/ The right of servitudes-Comparative aspects*. Prishtinë.

Nicholas, Berri (2009). *An introduction to Roman Law*. Skopje,

Planiol, Marcel (1922-1924). *Traité élémentaire de droit civil conforme aux programme officiel des facultés de droit/ Basic treaty of civil law in accordance with the official program of the faculties of law.*

Benussi, B. (2004). *Sendet, zotënimi dhe modifikimet e tija/ Items, possession and its modifications*.

Hoxha, A. (2017). *Iura In Re Aliena" Të Drejtat Reale Mbi Sendet E Huaja, Sipas Legjislacionit Shqiptar/ Iura In Re Aliena "Real Rights over Foreign Property, According to Albanian Legislation*.

Castelleti, G. (2009). *Normat zakonore dhe jeta shoqërore/ Customary norms and social life*. Tiranë.

Law No. 03/L-154 On Property and other Real Rights of Republic of Kosovo, article, 235 - 236.

Digesta Iustiniani 7.1.1.pr.1.