

Opinion Article

THE RIGHT OF OWNERSHIP AND LEGAL PROTECTION IN KOSOVO

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ABSTRACT

Background: The Republic of Kosovo is a country located in Southeast Europe with partial diplomatic recognition. Kosovo declared its independence on 17 February 2008, and has since gained diplomatic recognition from 116 member states of the United Nations. On 22 July 2010, the International Court of Justice rendered an advisory opinion on the legality of Kosovo's declaration of independence, which was not in violation of neither general principles of international law, nor specific international law. In 2022, Kosovo filed a formal application to become a member of the European Union.

In the Republic of Kosovo, the Constitution is the highest legal act. Laws and other legal acts shall be in accordance with this Constitution. Civil law is not codified but divided into separate laws. The property right is regulated by the Law on Property and Other Real Rights Law No. 03/L-154. Property rights and other real rights in the Republic of Kosovo originate from this law.

Keeping this in mind, in our article, we are going to highlight the range of problems related to property rights' regulation and protection, including gaps in primary and secondary legislation, analysing case law, courts, state attorneys, and administrative authorities' activities.

Methods: In this paper, we analyse the institution of property rights. We used comparative and analytical methods based on the current legislation in Kosovo, utilising resources from the former Yugoslavia. Additionally, we used some historical methods to derive concrete results. Kosovo has inherited the relics of the former Yugoslav legal system; building a new system is a challenge in and of itself. In the context of property law in general, its legal protection is crucial for the owner to use and dispose of his property.

Results and Conclusions: With the knowledge that the institution of property law is one of the main institutions of civil law, and is the fundamental institution of real law, we have analysed this law institution as a constitutional principle, regulated by special laws in Kosovo. Additionally, given the importance of the property institution, Kosovo has adopted laws that protect property rights, enjoying civil legal protection, criminal legal protection, and international protection. These laws should be in accordance with the country's Constitution, with international human rights instruments, as well as with EU legislation.

1 INTRODUCTION

The aim of this paper is to precisely analyse the right of ownership from the perspective of legal and civil-legal protection with instruments of national law, as well as to analyse and elaborate on a significant area of real-property law and the legal system in Kosovo. The right of ownership as the principal institution of real-property law deserves adequate legal and institutional protection. Providing this protection requires legislation, professional institutions, and general social mobilisation. The purpose of this paper is to highlight the shortcomings of the current system in Kosovo and to show what actions to take to improve this legal situation.

The approach toward the topic related to the field of property law and its protection has not received sufficient attention from different authors in the country, especially in scientific works or in the community of judges. Such studies are scarce, focusing mainly on addressing the conceptual and terminological aspects of property law and its different types. We believe that these treatments have not fulfilled the scientific requirement for empirical study in this field as they have not considered the aspect of its protection. Due to these facts and the ongoing changes in domestic property law legislation, we are determined to address this issue.

1 PROBLEMS OF DEFINING AND UNDERSTANDING OF PROPERTY RIGHTS

1.1 Definition of property rights under civil laws and codes

The right to property as a subjective and absolute right, belonging to the category of copyright norms, is a constitutional category that includes an important part of the Republic of Kosovo's Constitution⁴ and is further regulated by special laws. Ownership is fair and disposed of in an absolute way.

The right to property in Kosovo is regulated by the Constitution and special laws in the field of property.⁵ In a general sense, the right to data is related to the internal links regarding the control, enjoyment, and transfer of transmitted property values of certain materials. In a narrow sense, owners have the right to control their property and decide how it will be used. Property rights in Kosovo are regulated by the Kosovo Law on Property and Other Property Rights.⁶ According to this Law, the right of ownership is defined as:

*"Ownership is the comprehensive right over a thing. The owner of a thing may, unless it is not contrary to the law or the rights of third parties, deal with the thing in any manner he sees fit, in particular, possess and use it, dispose of it and exclude others from any interference. Intellectual property is subject to special rules."*⁷

The legal formulation consists of two parts: the concept of property rights and the restriction of these rights.⁸

Property law represents one of the most legal institutions in civil law in general, particularly the most important legal institution of real law. This scientific legal definition explicitly points to the great importance of property law within almost every country's civil legal system as an early legal institution and, as such, acquires a concise definition in Roman law, in that period's context. Even though Roman jurists did not define real law, classical jurists understood the basic idea that property should be defined as complete authority over things, known as *plena in re potestas*.

The term "proprietas," or property, etymologically means what belongs to someone. It emerged relatively later. However, attempts to define the meaning of property existed earlier and dated back to *jus civile* ancient law by Roman jurists, who stated that the rights to use, enjoy, and dispose of things are the content of the property rights (*jus utendi, fruendi, and abutendi*). Analysing this from a modern perspective shows that the owners under the right of property receive primarily these three sets of authorisations: *jus utendi, jus fruendi, and jus abutendi*.⁹ Examining these rights implies the absolute power of the owner over the property. The right of ownership represents a social relationship to the property. The holder of such a legal-social relationship has the full rights to use, enjoy,

4 Constitution of the Republic of Kosovo K-09042008 of 9 April 2008 <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 9 June 2023.

5 About property law in Kosovo in general see more in these articles: Marco Roccia, 'Reforming Property law in Kosovo: A Clash of Legal Orders' (2015) 23 (4) European Review 566, doi: 10.1017/S1062798715000307; Maj Grasten and Luca J Uberti, 'The Politics of Law in a Post-Conflict un Protectorate: Privatisation and Property Rights in Kosovo (1999–2008)' (2017) 20 (1) Journal of International Relations and Development 162, doi: 10.1057/jird.2015.4.

6 Law of the Republic of Kosovo No 03/L-154 'On Property and other Real Rights' of 25 June 2009 <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2643>> accessed 9 June 2023.

7 *ibid*, art 18.

8 Jean Carbonnier, *Droit civil* (2e edn, Presses Universitaires de France 2017) t 1, 46.

9 Puhani Ivo, *E drejta romake* (Universiteti i Prishtinës 1989).

derive benefits, and dispose of his property. Nowadays, in contemporary law and legal science, most countries have the right of ownership defined by their laws. The right of ownership means a real right that contains wider authorisations when using and disposing of an item.¹⁰

The right of ownership is a real right that grants its holder (owner) the fullest authority over any private legal power over his property, which the legal order allows and the state guarantees. The importance of property as a legal institution is also widely acknowledged in contemporary literature. Ownership, among other real rights, grants the holder (owner) the right to exercise control over things in a potentially unlimited manner.¹¹

As noted above, most countries with positive laws have regulated property rights; in Kosovo, this issue is regulated by law. This legal definition of ownership generally corresponds to the provisions of the laws from contemporary countries, especially those belonging to the continental system, to some extent influenced by the civil codes of France, Germany, Italy, Switzerland, and others.

The content of ownership under Kosovo Property Law and other Real Rights, in the sense of legal regulation and in the sense of authorisations granted to the owner,¹² interferes with the content of some civil codes and positive laws. However, it can be compared with the definitions of some civil codes, such as the Albanian Civil Code¹³ and North Macedonian law on Property Law and other Real Rights.¹⁴

According to Article 149 of the Civil Code of Albania, ownership is the right to enjoy and possess objects freely within the limits established by law.¹⁵ The definition of ownership's content in the Albanian Civil Code allows us to easily conclude that Albania began building a proper legal-civil system quite early, but the period of dictatorship destroyed the entire previous system.

Even the countries in the region neighbouring Kosovo, including Macedonia,¹⁶ have left the socialist system of government and accepted the democratic system with their post-communist laws, accepting the spirit and principles of the French, German, Italian, and other civil codes. From the study of the definition of ownership, according to the legal definitions provided by different countries, and concretely from the aforementioned countries, it is indeed clear that while wording may differ, the content is similar. The content of the definition of ownership is approximated amid positive laws, but is also consistent with the wording that Roman jurists made of property law, except that the issue now arises in completely different economic and social circumstances.

The Universal Declaration of Human Rights, namely Article 17, states:

10 Gams Andrija, *Bazat e së drejtës reale* (Universiteti i Prishtinës 1978).

11 Francesco Galgano, *E drejta private* (Luarasi 2006).

12 Law No 03/L-154 (n 6).

13 Civil Code of the Republic of Albania No 7850/1994 of 29 July 1994 (amended by Law No 113/2016 of 3 November 2016) <<https://www.wipo.int/wipolex/en/legislation/details/20976>> accessed 9 June 2023.

14 Law of the Republic of Macedonia No 07-762/1 'On Ownership and other Real Estate Rights' of 20 February 2001 <<https://www.slvesnik.com.mk/Issues/9B34D7ACD289420FBAF034D79CEF86B9.pdf>> accessed 9 June 2023.

15 Civil Code (n 13) art 149.

16 The international recognition of North Macedonia's independence from Yugoslavia in 1991 has been opposed by Greece because of the flag and the name "Macedonia" (considered symbols of the Greeks). Relations with Greece were finally normalized in 1995, but problems with the name Macedonia still exist. The change in the political status of Kosovo, the implementation of the Ohrid Agreement, which marked the end of the Albanian war in 2001, as well as the low economic development continue to be a matter of discussion for this country.

"Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."¹⁷

So, the Declaration refers more generally to property, so it should be understood as an individual and the community's property, considering the type of property. At the same time, it prohibits arbitrary deprivation of this right.

However, neither the International Convention on Political and Civil Rights nor the International Convention on Economic, Social and Cultural Rights,¹⁸ which turned the Universal Declaration into a legally-binding bond, do not touch on the issue of property protection. They could not achieve a picture at the time when the European Convention on Human Rights was being drafted. The wording that was finally adopted in the first Protocol defines that right of the state, giving a wide power to interfere with this right. The right is regulated by Protocol No. 1 of the European Convention on Human Rights, approved in 1952. According to this article:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."¹⁹

1.2 Understanding and methods of protection of property

In the complexity of property rights problems, property rights protection is one of the most current, interesting, and equally-important topics, both theoretically and practically. It remains alive and recent as the subjective right of an individual enjoys legal protection. The protection of property in different legal orders is not the same. In contrast to the past, especially the order established in monistic countries, today, the protection of property is particularly important in countries with democratic regimes. It is considered the basic condition for establishing and guaranteeing a better status in the personal economy of the subjects, both on national and international levels.²⁰

Protection of property is one of the most important rights. The legal system must address the protection of property rights of someone else besides only the owner. Whereas, in the Constitution of the Republic of Kosovo, protection of property states:

"The right to own property is guaranteed. Use of property is regulated by law in accordance with the public interest. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public

17 Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 9 June 2023. The Universal Declaration of Human Rights is a universal international legal act. All member states of the UN undertake actions or the issuance of internal legal acts that will be done by its others.

18 International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights (adopted 16 December 1966 UNGA Res 2200 (XXI) A) <[https://undocs.org/en/A/RES/2200\(XXI\)](https://undocs.org/en/A/RES/2200(XXI))> accessed 9 June 2023.

19 Article 1 of Protocol no. 1 of the European Convention on Human Rights. See, Council of Europe, *European Convention of Human Rights: as amended by Protocols Nos 11, 14 and 15; supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECtHR 2013) <<https://www.echr.coe.int/Pages/home.aspx?p=basictexts/convention>> accessed 9 June 2023.

20 Erarber Madhi, *Mbrojtja e pronësisë dhe jurisprudenca* (Triptik 2008).

*purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*²¹

This right, as will be discussed in further detail below, is also guaranteed by international law.

As is well known, in the conduct of civil proceedings and their dynamics, the parties bear more responsibility (especially regarding act procedures) than in the development and dynamics of criminal proceedings, as this is more often carried out in an ex officio manner. In terms of these principles in practice, the reality in Kosovo is that the property protection situation is inadequate; it is alarming and reflects the inadequate functioning of the legal system and the irresponsibility of administrative bodies, both at local and central levels.

One of the problems with the inability to protect property rights is the fact that cadastral offices often lack documentation from earlier time periods, this documentation has often been destroyed or lost. Though there are also cases in which former Serbian authorities have worked with these administrative bodies while leaving Kosovo. During 1999, they took many cadastral books with them. As a result, there are problems identifying the property rights of individuals, and, in this case, citizens are often required to protect this right through the courts. Ownership infringement means any intrusion on the thing by a third party, a foreigner, creating a situation that does not comply with the owner's rights to own, enjoy, and dispose of his belongings.²²

Considering that ownership is one of the main foundations on which a state and society are built, and the right to have private property in a democratic society is one of the fundamental human rights and freedoms, the protection of the right is one of the primary tasks that the state must fulfil in today's modern societies.

2 PROTECTION OF PROPERTY RIGHTS IN KOSOVO

The right of protection of personal and property values exists for every individual and depends on his degree of professional development and the current economic development level. This right existed in older economic systems in countries where the state was not well-developed; individuals exercised it by using self-defence to preserve their created wealth and personal integrity. Ownership is the broader power vested in the owner of an item.²³ In one social study, the individual who claimed to have a right, then was deprived of that right, chose the means of realising or defending the right he had. The measures he took to protect property rights were not initially purely civil law measures. Some civil law institutions and remedies commonly originate with those of criminal law.²⁴

The protection of subjects' rights concerning property gradually takes a certain form. They are protected by certain remedies that are sanctioned by the given legal system. This system allows civil legal science to recognise remedies, and judicial practices to apply remedies that are elaborated and preferred by a legal system or other legal systems' doctrine. When discussing civil legal protection, some authors thought it necessary to express the subject's abilities, his individuality, and the individuality of the property. Certain rights, such as ownership and possession, can only be acquired and protected in relation to specific

21 Constitution (n 4) art 46.

22 Ardian Nuni dhe Luan Hasneziri, *Leksione te pronesise dhe te trashegimise* (Tirnae 2008) 76.

23 Petar Klarić i Martin Vedriš, *Gradansko pravo* (14 izd, Narodne novine 2014).

24 Ejup Statovci, *Leksione mbi teorinë e së drejtës* (Universiteti i Prishtinës 1978).

individualized items. The legal ownership relationship shares common elements with the general legal-civil relationship. On the other hand, it has special characteristics that make it distinct. These features are the rich, the absolute, the real character, as well as the enduring, continuous, permanent nature.

Furthermore, the absolute and real nature results in another characteristic of ownership, the pursuit of the possession by the owner against any person who illegally possesses it, albeit in good faith. Civil-legal protection equips the owner with the appropriate means to safeguard his property rights against any infringements committed by others. The legal remedy used to achieve such protection is the lawsuit, which can generally be of real or compelling nature. Obligation lawsuits fall under the category of civil law while ownership primarily deals with real lawsuits. The need for protection for the owner arises when his control over the property is wholly or partially contested by others. When the rights of the owner are disputed with a third party, in whole or in part, and the third party claims the full or partial (servitude) real right over the thing, the law affords the owner the means of protecting his property. That is the claim for restitution of a third party's claim over all property, as well as the denial of a third party's claim for possession of a partial real property right.

Modern legal systems regulate the protection of subjective civil rights of various subjects by law. The regular protection of subjective civil rights primarily occurs through the judicial authorities in civil proceedings. Of course, they are also protected in administrative and criminal proceedings. Depending on the proceedings' subject, the defence can occur not only during the proceedings at the trial of the opposing parties, but also in the extrajudicial, executive, and bankruptcy proceedings. Another specific way to protect subjective civil rights is the necessary self-help, which the law exclusively allows. It is recognised in the justice system as a special form of protection for subjective civil rights and serves the subject's self-defence rights regarding possession in cases where judicial intervention is delayed. Subjective civil rights are not primarily protected by the courts (the principle of formalism).²⁵ Whether an individual's subjective civil rights will be upheld based on the civil legal system's guarantee, by remedies or not, depends on the holder of such a right himself, based on his attitude and initiative. He shall decide for himself whether to exercise the power of defence of his subjective rights.

The principle of disposition that applies in civil law provides the right holder with the opportunity to choose and determine the course of action he wishes to pursue. If the holder decides to initiate the protection of his rights, the state and legal system offer an appropriate type of legal protection. Thus, the state has established the mechanism for the realisation of subjective civil law by creating courts that provide this protection in relevant proceedings. Property safeguards vary, but in this case, the property protection remedies recognised by the owner under civil law will be addressed. The main remedies for the protection of property rights include the restitution lawsuit, the pauliana (denial) lawsuit, and the lawsuit filed by the owner, the possessor, for new work and potential damage.²⁶ All forms of property, according to the law, enjoy protection as individual rights. Based on the authorisations granted to the property rights holder to retain his owned property, the owner can file a lawsuit to request the return of the individually-designated possession from the possessor.²⁷

25 Ivo (n 9).

26 More details about a way of protecting property rights as restitution may be found here: Jose-Maria Arraiza and Massimo Moratti, 'Getting the Property Questions Right: Legal Policy Dilemmas in Post-Conflict Property Restitution in Kosovo' (1999-2009) (2009) 21 (3) *International Journal of Refugee Law* 421, doi: 10.1093/ijrl/eep012.

27 Law No 03/L-154 (n 6).

3.1 Actio rei vindicatio

This lawsuit is filed by the non-possessory owner against the non-owner, respectively, the claimant is the owner of the possession and the defendant is the possessor of that thing. The plaintiff must present evidence and argue that he is the owner of the thing for which he seeks its return. The request should include the return of the individually-designated item, eventual indemnity for damage to the item, and return of the benefits (the quantity of benefits depends on whether the possessor is in good faith or not). In response, the defendant should submit objections that demonstrate he has any real right according to which he is authorised to possess the thing for a certain period, or show he has a binding right towards the plaintiff which authorises him to possess the thing for a certain period, or he has paid the rent for a longer time.²⁸

Given that the right of ownership is not obsolete, the right to file this claim is also not obsolete. The protection of property using a claim for restitution and denial is also referred to as real legal protection due to its real character, which aims to recognise and sanction a real property right. The restitution lawsuit has a cognitive and binding nature. At the same time, it is the lawsuit of the non-proprietor against the unauthorised possessor for the item's return from their unlawful possession. The most important and the primary civil remedy for property protection is the re-infringement lawsuit. The same opinion is shared by Ardian Nuni, a researcher in civil matters. He states:

"The claim for the search of the property is the main claim provided for in the Civil Code for the Protection of Property."²⁹

Thus, Article 296 of the Civil Code of Albania³⁰ provides that the owner has the right to bring action against demand to his property from any possessor or holder. This right belongs also to any joint owner of the joint property so it will be delivered to all joint owners. The lawsuit for the property search is one of the oldest lawsuits for the protection of property rights, and it received comprehensive treatment in Roman law, where it was known as "*actio rivendicatio*." In Roman law, this lawsuit was the most important solution for property protection.³¹

The object of the search in the restitution lawsuit is the defendant's obligation to recognise the owner of the disputed object and return possession of his property. The reinstatement lawsuit, in the opinion of Ardian Nuni and Luan Hasneziri, is a non-prescriptive lawsuit and can be filed at any time by the owner of the item.³² There are several cases when a reinstatement lawsuit can be filed. Firstly, when the defendant has wrongfully possessed the item, as well as held it, without any legal title or cause.

Another case occurs when the defendant is legally in possession of the item but refuses to return it to the owner, although he is obliged to do so. One additional example of these cases happens when the legal action that allows the defendant to acquire possession of the object is found invalid or declared invalid. Also, this claim takes place in cases when the possession was taken away from the owner and passed on to another person based on an unlawful administrative act, or when the owner took possession of the item by passing it on to another person based on an illegal administrative act.

28 Ruzhdi Berisha dhe Atdhe Berisha, 'E drejta civile (pjesa e përgjithshme, e drejta sendore, familjare dhe trashigimore) dhe shembuj të parashtresave dhe vendimeve të gjykatës' në *Doracakun për përgatitjen e provimit të jurisprudencës* (bot i 3të, Prishtinë 2008) 407.

29 Nuni and Hasneziri (n 22) 79.

30 Civil Code (n 13) art 296.

31 Ejup Statovci, *Mbrojtja e pronësisë: studim komparativ* (ribot, Enti i Teksteve 2009).

32 Nuni and Hasneziri (n 22) 81.

The object of the reinstatement lawsuit should only be movable or immovable, individually-designated and non-designated material objects, as it is not known whether they are the same or belonging to parties. In this case, the owner can be sued with another lawsuit, such as the lawsuit for unjust enrichment, etc. The claim's request must contain a detailed description of the item that is being sought to be reinstated, since the object of the claim is the individually determined item.³³

3.2 Actio publiciana (the lawsuit from the alleged property right)

This lawsuit, also known as the *publiciana lawsuit*, stems from Roman law. It serves to resolve a dispute between two parties over possession of a thing, wherein neither party can argue that they are entitled to the item, but it is given to the possessor on a better basis for possession. The plaintiff in this dispute must argue the legality of the possession and the legal basis of possession, known as "titulus," on which the possession was acquired based on valid legal work that gave the acquired ownership right. The question arises as to why the plaintiff has not acquired the right of ownership. In most cases, the person who has acquired the item does not have the right to dispose of it, and therefore, the possessor was unaware of the illegality of his possession; in this case, he is considered a bona fide acquirer.

If two persons are considered the alleged owner, the stronger legal basis lies with the person who has acquired the item based on legal work with a lien, as opposed to those without a lien. If the legal grounds are of the same priority, the person who possesses the property where the item is located has the stronger claim. The plaintiff is the previous possessor who also legally acquired the individually-designated thing based on a valid legal basis while the defendant is the current possessor.

The claim in this lawsuit is for the delivery of the individually-assigned item, the return of the benefits, as well as eventual compensation if the item was damaged. Concerning the objections, the defendant should primarily argue that he is the owner of the item so that this lawsuit can affect anyone except the owner of the thing. The defendant can also object that there is a stronger basis for possession, at least equal to that of the plaintiff.³⁴ The right to file this lawsuit is also not obsolete.

3.3 Actio negatoria (negative lawsuit due to obstruction of ownership)

The second civil-legal solution available to the owner for the protection of the property rights, recognised by Kosovo law, is the lawsuit for termination of the infringement, otherwise known as the denial lawsuit. This type of lawsuit is also recognised in Roman law and is one of the oldest lawsuits for property protection, known as *actio negatoria*. The purpose of the denial lawsuit is, on the one hand, to establish the plaintiff's right of ownership and, on the other hand, to refute the defendant's claim of any right to intervene, thereby, denial of the right claimed by the defendant. It is named a denial lawsuit precisely for this reason. This type of lawsuit safeguards both movable and immovable property.

33 Valentina Kondili, *E drejta civile: Pjesa e Posacme: Pronësia, të drejtat reale të përkohshme dhe trashëgimia* (Shtypshkronja Geer 2008) vël 2. More about resolution of property disputes may be found here: Leopold von Carlowitz, 'Resolution of Property Disputes in Bosnia and Kosovo: The Contribution to Peacebuilding' (2005) 12 (4) *International Peacekeeping* 547, doi: 10.1080/13533310500201969.

34 Berisha dhe Berisha (n 28) 408.

The object of the claim request in the denial lawsuit obligates the defendant to recognise the plaintiff as the rightful owner of the property in question during the trial, particularly when the defendant denies this right to the plaintiff. The defendant should cease the infringement of ownership over the plaintiff's property, committing to not repeat the infringement in the future, as well as compensate the plaintiff for the damage caused when the property infringement was caused by a damage.

So, through the denial lawsuit (*negatore*), the owner-possessor seeks protection against disturbances unrelated to the actual taking of the item. The concern must be directed against the rights of the property right holder. Any unauthorized use of the object is not allowed. Concerns can be raised in relation to both aerospace and underground real estate, affecting the regular use of space. The purpose of the denial lawsuit is to stop and remove the obstruction, respectively, to return it to its previous state and to deter future disturbance.

This type of lawsuit is brought about when the item has not been recovered, but the alleged owner or legitimate owner is being disturbed or hindered in the exercise of their property rights in any way, by a third party, without any valid reason. In these cases, the plaintiff is the legitimate owner, or alleged owner, of the immovable or movable property. Accordingly, the defendant is the person who commits the property disturbance, or the person who orders the other to carry out such actions. The claim seeks the cessation of further property concerns and obstruction of ownership.

4 CONCLUSIONS

Recalling that the institution of property law is one of the main institutions of civil law and the fundamental institution of real law, we understand that this law institution is a constitutional principle and is regulated by special laws in Kosovo.

Property rights have acquired an international status as they are protected by international conventions, such as the Universal Declaration of Human Rights, adopted by the United Nations Assembly, and the European Convention for the Protection of Human Rights, including Protocol No. 1 as the most important international act of legal regulation of the protection of property rights. These international documents define property rights as human rights, and in this way, protect them.

Since Kosovo's declaration of independence, the laws on the protection of property rights were adopted, which allow civil legal protection, criminal legal protection, and international protection.

In terms of the civil-legal aspect, well-known legal actions, such as *actio rei vindicatio*, *actio publiciana* (lawsuit from the alleged right of ownership), and *actio negatoria* (lawsuit due to the impediment of ownership) are recognised, dating back to Roman law, whereby these lawsuits provide the right to file a claim in civil law proceedings to obtain the protection of property rights.

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