Acquisition and loss of ownership under the Law on Property and Other Real Rights (LPORR): The influence of the BGB in Kosovo Law

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1. Introduction

The aim of this paper is to analyse the legal bases of the new Law on Property and Other Real Rights (LPORR) of 2009 related to the acquisition and loss of ownership.[1] During this analysis I will clarify forms and legal requirements for acquiring and losing ownership. Special attention will be paid to the influence of the German Civil Code (BGB). Beyond the influence of the BGB, the new law also contains many legal solutions which were applicable in Kosovo prior to the entry into force of the new law. Moreover, this article aims to clarify the meaning of the legal provisions and to facilitate implementation by explaining the content and origin of relevant provisions in the light of a comparative perspective with other jurisdictions, in particular with German Civil Code.

2. The ownership concept

The institution of ownership represents the main private law institution of every jurisdiction.[2] Private ownership was developed and followed by changes in the different social orders, and it does not represent a consistent concept but rather a legal institute variable across time and different social systems. In principle private ownership in the contemporary codes gives to the owner certain rights over his property.[3] The normal attributes of transmissibility and power to exclude others apply to ownership, but so do they to other proprietary rights, as well. An owner may have waived his right to use land by creating a short-term right of another person, as for example in the case of a lease.[4] But the extent or limitation of property rights depends on the systems and economic structure of societies, of which some recognize more rights for the owner than others.[5] In this regard, each social system in different phases has developed the concept of ownership in different forms in order to prevent or resolve conflicts relating to specific resources.[6]
Examples: The French Civil Code of 1804, Art. 544 states: "Ownership is the right to enjoy and dispose of a thing in the most absolute manner provided it is not used in a way prohibited by statutes or regulations".[7] The Italian Code of 1865 also follows a similar content.[8] A comparable definition is contained in the German Civil Code, where § 903 states: "The owner of a thing, to the extent that a statute or third-party rights do not conflict with this,

[1] Law on Property and Other Real Rights (hereafter LPORR) of Kosovo is adopted on 25 June 2009, promulgated by decree of President on 15 July 2009, published in the Official Gazette of Republic of Kosovo no. 57/2009, 4 August 2009, entered into force 15 days after its publication, respectively on 20 August 2009.
[2] Statovci, Ejup, The Ownership, origin and development: comparative study, Pristine 1983, Republished in 2009, p.269.
[3] Porrini, Donatell & Ramello Giovanni B., Property rights dynamics: Current issues in law and economics, in: Donatell Porrini & Giovannin Battista Ramellon (eds.), New York, 2007, p. 1.
[4] See, Smith, Roger J., Property law, Third Edition, New York, 2000, p. 4.
[5] Parisi, Franceso, The fall and rise of functional property, in: Donatell Porrini & Giovannin Battista Ramellon (eds.), New York, 2007, p. 19.
[6] Mattei, Ugo, Basic principles of property law: A comparative legal and economic introduction, London, 2000, p. 4.
[7] French Civil Code, Translated by Georges Rouhette, Professor of Law, with the assistance of Dr Anne, Rouhette-berton, Assistant Professor of English, MISE A JOUR LEGIFRANCE, 21 February 2004, at: www.legifrance.gouv.fr.
[8] Parisi, Franceso, The Fall and Rise of Functional Property, in: Donatella Porrini & Giovanni Battista Ramellon (eds.), Property Rights Dynamics: A Law and Economics Perspective, London et al. 2007, pp. 19-39, p. 29.

deal with the thing at his discretion and exclude others from every influence."[9] The Austrian Civil Code states the owner's right to enjoy and manage the thing and its fruits and to exclude all others.[10] Also the Albanian Civil Code of 1994 takes a similar approach: "Ownership is the right to enjoy and dispose the thing freely, within limitation provided by law".[11] This concept is consistent with the view of absolute private property that was developed in Roman law but that also returned in modern times after the French Revolution. According to the modern concept of ownership in the contemporary codes, ownership is a comprehensive and exclusive property right that includes the rights to enjoy (dispose of) the thing and to exclude others.[12] Correspondingly, the owner has a spectrum of rights that includes *ius utendi* (the right of use), *ius fruendi* (the right of consumption), and *ius disponendi* or *abutendi* (the right to transfer or destroy).

3. The ownership concept under LPORR

Art. 18 LPORR contains a complete description of ownership rights. According to Art. 18 LPORR, ownership is defined as follows:

> *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 a thing in any manner he sees fit, in particular possess and use it, dispose of it and exclude others from any interference.*[13]

This legal provision places special emphasis on the definition that ownership is a comprehensive right over a thing including all the typical rights of an owner, such as *ius utendi, ius fruendi* and *ius disponendi*. These three important rights of the owner are explained in the second sentence of Art. 18, which states that the owner has the right to possess, use and dispose of the property. The owner is free to use these property rights, unless they are exercised contrary to the law or if the use of the rights would violate the rights of other persons.[14] Within the meaning of Art. 18 LPORR, the proprietary rights of the owner can be defined as follows: The owner can use and dispose of his property according to his will and exclude others from interfering with his property, in accordance with the law and without causing damage to others.

The definition of ownership in Art. 18 the LPORR is largely influenced by the German Civil Code,[15] although the formulation is different, the content of the provision is nearly the same. According to both, the Kosovo (LPORR) and the BGB, the owner of a thing has

[9] See BGB, Chapter III, Ownership, § 903, Service provided by the Federal Ministry of Justice.
[10] See Klaus, Stanislawa & Habdas, Magdalena, The Notion of Real Estate and Rights Pertaining to it in Selected Legal Systems, in: Elizabeth Cooke (ed.), Modern Studies in Property Law, Vol. III, Oxford, 2005, pp. 251-270, p. 264.
[11] See Civil Code of Albania, adopted by Law no. 7850, 29.7.1994, amended by Law no. 8536, 18.10.1999 and Law no.8781, 3.5.2001, Art. 149.
[12] Gambaro, Antonio, Public vs. Private Land Property? Or Complex Regime of Rights on Land? in: Prof. Maria Elena Sánchez Jordán & Prof. Antonio Gambaro (eds.), Land Law in Comparative Perspective, The Hague, New York, London, 2002, fq. 15.
[13] Law on Property and Other Real Rights, Official Gazette of Republic of Kosovo no. 57/2009, 4 August 2009, Official English version.
[14] The law may provide certain limitations on the use of the property when general interest (public interest) is involved. Although the owner is free to use and dispose of his property, he cannot exercise his right in a manner that harms the rights of another person or interferes in the right of other persons.
[15] For more information see § 903 BGB.

width equal rights, the limitation of the ownership is only by law (always to be understood limitation for the public interest) and the rights of other persons.

4. The object of ownership

Referring to the object of real rights, the LPORR uses the term "thing".[16] In the context of the LPORR, the term "thing" means movable property, immovable property and intangible rights (Art. 8 LPORR). However, the law does not define the word "thing". The literature specifies that anything that can be an object of ownership is called a "thing".[17] But there are differences between different jurisdictions in how the term "thing" is used for an object that can be subject to ownership or any other real right. In this regard, the German Civil Code uses the term "thing" to refer to corporal (material) objects only.[18] The same definition is used in the Polish Civil Code. Consequently, intellectual rights or claims are not considered to be things by the German or the Polish Civil Code, because they are not material objects.[19] Similarly, the LPORR does not regulate intellectual property; it is excluded in order to be regulated by the special law (Art. 18 (2) LPORR). But the term thing includes both corporal and incorporeal objects because Art. 8 LPORR states that a thing (asset) includes: "movable things, immovable things and intangible rights". It should be noted that ownership as a real right can be established only over material (corporal) things. The term "thing" in the sense of tangible rights can be an object of other real rights.[20] The French Civil Code does not define the word "thing", but does include rules on things (*les biens*), which may stand for corporal as well as incorporeal things.[21] Thus, the term "thing" in the LPORR follows the tradition of the French Civil Code. Also, the Austrian Civil Code contains a much broader concept of "things" than the German Civil Code, as it included all objects separated from a human being, which may be utilized by humans.[22] In other words, it encompasses everything that can be the object of a right, even claims arising, e.g., from contract or tort.[23]

[16] See Art. 8 LPORR. The English version of the law uses the term "assets" and not "thing" as in the Albanian version of the law.
[17] See Beekhuis, Jacob H., Civil Law, in: Frederick H. Lawson (ed.), Property and Trust, Vol. VI, Chapter 2, Structural Variations in Property Law, The International Encyclopedia of Comparative Law, The Hague, Paris 1976, pp. 3-34, p. 6.
[18] See BGB, § 90 that states: "Only corporal objects are things as defined by law". On the other hand see § 903 referring to ownership, stating that ownership can be over things meaning such corporal things as defined by § 90. See also Beekhuis, Jacob H., Civil Law, in: Frederick H. Lawson (ed.), Property and Trust, Vol. VI, Chapter 2, Structural Variations in Property Law, The International Encyclopedia of Comparative Law, The Hague, Paris 1976, pp. 3-34, p. 6.
[19] See Klaus, Stanislawa & Habdas, Magdalena, The Notion of Real Estate and Rights Pertaining to it in Selected Legal Systems, in: Elizabeth Cooke (ed.), Modern Studies in Property Law, Vol. III, Oxford 2005, pp. 251-270, p. 252.
[20] See LPORR, Art. 11 that stipulates: "Intangible rights are limited real rights and include the claim to demand the performance of a specific act by another person, in particular the payment of money".
[21] See Stanislawa Klaus & Magdalena Habdas, The Notion of Real Estate and Rights Pertaining to it in Selected Legal Systems, in: Elizabeth Cooke (ed.), Modern Studies in Property Law, Vol. III, Oxford 2005, pp. 251-270, p. 253.
[22] ABGB, 1911, Art. 285. See also Klaus, Stanislawa & Habdas, Magdalena, The Notion of Real Estate and Rights Pertaining to it in Selected Legal Systems, in: Elizabeth Cooke (ed.), Modern Studies in Property Law, Vol. III, Oxford 2005, pp. 251-270, p. 253.
[23] See Hausmaninger, Herbert, The Austrian Legal System, Second Edition, Wien, 2000, p. 246.

5. Acquisition of ownership: distinction among objects

Both the LPORR and the German Civil Code make a distinction between movable and immovable property. According to the LPORR, immovable property (in Albanian *send i paluajtshëm*) includes land and every object that is permanently connected to the land, such as buildings. All other property shall be, according to Art. 10 LPORR, deemed movable (in Albanian *send i luajtshëm*). The LPORR contains a definition of movable property in Art. 9 (1) LPORR which states: "Movables are independent corporal objects that are not permanently attached to the ground or a part of the ground, and are generally capable of being moved." A similar definition can be found in the French Civil Code.[24] Also, the German Civil Code draws a clear distinction between movable property (*bewegliche Sachen*) and immovable property (*Grundstücke*). The BGB makes a clear distinction for acquisition and loss of ownership for immovable property (title 2 of Book three) and movable property (title 3 of Book 3). The word "immovable" in the German Civil Code refers to land and every object attached to the land, including buildings. § 94 (1) BGB, states: "The essential parts of a plot of land include the things firmly attached to the land, in particular buildings, and the produce of the plot of land, as long as it is connected with the land. Seed becomes an essential part of the plot of land when it is sown, and a plant when it is planted." According to the provisions of the BGB, all other property is deemed to be movable. The parts of a plot of land do not include things that are connected with the land only for a temporary purpose.[25]

The distinction between movable and immovable property is relevant with respect to the modes of acquisition and loss of ownership. Both laws require agreement (*ius titulus*) for the acquisition of ownership and delivery of a thing for movables or the entry of the change in legal title in the land register (*Grundbuch*). According to the LPORR, registration of title for the transfer of ownership for immovable property must be entered into the Immovable Property Rights Register, which is essentially the same as the Land Register in German law in which all real rights (rights *in rem*) in the immovable property have to be registered in order to respect the *principle of publicity* of all rights *in rem*. Contrary to other jurisdictions, German law contains two basic principles for acquisition of ownership: the Principle of Abstraction (*Abstraktionsprinzip*) and the Principle of Separation (*Trennungsprinzip*). The BGB strongly differentiates between obligatory contracts (regulated by the second book of BGB on obligations) and the contract on the actual transfer of ownership (regulated by the third book of BGB on property). The principle of separation means that the contract for the sale of a thing and the contract for the transfer of ownership should be treated separately and follow the rules specified for each. The principle of abstraction states that the contract for the transfer of ownership may be valid irrespective of the validity of the contract of obligations. Accordingly, a sales contract alone would not lead to transfer of ownership to the buyer but would merely give rise to an obligation by the seller to transfer ownership of the good in question. The seller is then, by obligatory contract, obliged to form another and separate contract for the transfer of ownership. Only once this contract is formed and the good is delivered does the buyer acquire ownership of the purchased good. In other words, for the transfer of ownership two contracts are required: the obligatory

[24] See Art. 528 FCC that states: "Animals and things which can move from one place to another, whether they move by themselves, or whether they can move only as the result of an extraneous power, are movables by their nature".

[25] § 95 (1) BGB.

contract and the contract of transfer of ownership. This rule does not exist in the other jurisdictions including Kosovo. In Kosovo law only the contract of sale is required along with the delivery of the thing (for movables) or registration of title in the immovable property rights registry (for immovable), but a clause of transfer of title must be included in the contract. In case of any periodical fulfilment of obligation (payment by instalments), the transfer of title could occur when the last instalment payment or last obligatory action is fulfilled.

5.1 Acquisition of ownership over movable property

5.1.1 Acquisition of ownership through agreement

The expression of will between parties (transferor and transferee) and the delivery of things to the acquirer are required in order to acquire ownership over movable property. According to Art. 21 (1) LPORR, to acquire ownership over movable property a valid legal transaction (e.g agreement, will) between the owner and the transferee passing ownership and the delivery of the movable property to the transferee are required. This provision contains two components: 1) legal title (*ius titulus*) and 2) acquisition form (*modus aquirendi*). A legal transaction is required, such as a valid title (agreement and will).[26] The agreement is the obligatory contract (*causa*), but the legal title could be the will as well. On the other hand, the *modus aquirendi* has to be the delivery of the thing to the acquirer of ownership. This legal provision is considerably influenced by the German Civil Code, which has approximately the same content. However, some specifics remain in the BGB, such as those explained above under section 5 and the crucial distinction that under the BGB legal title is a real contract independent from the *causa* (*principal of abstraction*).[27] Consequently, both legislative acts specify the same requirements for acquisition of ownership of movable property. In addition, it should be emphasized that the acquisition of ownership of movable property under LPORR does not differentiate from the previous approach provided under the property law of 1980.[28]

5.1.2 Retention of title

The main advantage of the principle of abstraction under the BGB is its ability to provide a secure legal construction to nearly any financial transaction. It may function under the well-known institute of *retention of title*, whereby the seller of a movable thing retains title until the purchase price is paid in full by the buyer (reservation of title).[29] Retention of title enables the seller to reserve ownership after the sales contract is concluded. With the principle of abstraction, the BGB has a simple answer to that: The purchase contract obliges the buyer to pay the full price and requires the vendor to transfer property upon receipt of the

[26] In this context agreement should be interpreted as the contract and the will. In the Albanian version of the law the word "legal transaction" is used in addition to the word contract. In Albanian the term "legal transaction (*puna juridike*)" includes legal title (ius titulus) which could be agreement and will.

[27] Compare § 929 BGB. "For the transfer of the ownership of a movable thing, it is necessary that the owner delivers the thing to the acquirer and both agree that ownership is to pass."

[28] Compare, Law on basic property relations, Official Gazette of SFRY, no. 6/1980, Art. 34 (1).

[29] Compare § 449 (1) BGB: "If the seller of a movable thing has retained title until payment of the purchase price, then in case of doubt it is to be assumed that ownership is transferred subject to the condition precedent that the purchase price is paid in full (retention of title)."

last instalment. The seller keeps ownership up to the last payment, and the buyer is the mere holder of the purchased goods. If the buyer fails to pay in full, the owner may reclaim his property by revindication (§ 985 BGB). Another exception exists regarding the effects of retention of title against third parties. If the buyer sells a thing in the course of its business, then the retention of title does not have effect against third party.[30] This rule does not exist in the LPORR of Kosovo, but it is stated in the Law on Obligation.[31] According to Art. 540 of the Law on Obligation, the seller may reserve title until the full purchase price is paid by the buyer. However, it may have effect against third parties (the creditors of the buyer) only if such reservation of title is made in a public legal document, meaning that the contract must be verified in court or notary (formal contract). Consequently, two differences should be noted concerning the two laws:

1) Under the LPORR only a contract of sale is required for transfer of ownership which itself includes the transfer of thing and the transfer of ownership. Under German law two contracts are required: the sale contract including delivery of a thing and the contract for the transfer of ownership;
2) the possibility for a reservation of title is known in both jurisdictions, however according to the LPORR the reservation of title may have effect against third party if it is made through formally contract (contract verified by court/notery).

5.1.3 Delivery of the thing

Generally, both legislative acts require delivery for the transfer of movable property (Art. 21 (1) LPORR/§ 929 BGB). Delivery, however, may be replaced by other means. Regardless of Art. 21 (1) LPORR other forms of delivery are allowed:

a) *Fictive delivery* is considered when the thing is in possession of the acquirer, and thus there is no need for delivery. Art. 21 (2) LPORR states: "If the transferee is in possession of the movable property, a valid agreement passing ownership is sufficient for the transfer of ownership."[32] This provision is similar to the German Civil Code, which stipulates the same approach under § 929 sentence 2 BGB: "If the acquirer is in possession of the thing, agreement on the transfer of the ownership suffices."[33]
b) *Indirect delivery* is considered when the thing continues to be held by the transferor (owner) but there is an agreement with the acquirer to transfer the ownership, although the thing will continue to be in the possession of transferor. Art. 21 (3) LPORR states: "If the owner is in possession of the movable property, the delivery may be substituted by an agreement between the owner and the transferee by which the transferee obtains indirect possession of the movable property." In this case the transferor (owner) should have an agreement with the transferee (acquirer) which must be valid and through

[30] Compare § 449 (3) BGB: "An agreement on retention of title is void to the extent that the passing of ownership is made subject to the satisfaction by the buyer of third-party claims, including, without limitation, those of an enterprise associated with the seller".
[31] Law on obligations of 1978 applicable in Kosovo, Art. 540.
[32] LPORR, Art. 21 (2), Official Gazette of Republic of Kosovo no. 57/2009, 4 August 2009, Official English version. In case of fictive delivery there is no need for delivery because it is a legal fiction that presumes the delivery even though the thing is in possession of the acquirer. In this case the agreement is sufficient for acquisition of ownership.
[33] BGB, Service provided by the Federal Ministry of Justice in corporation with juris GmbH – www.juris.de, Translation provided by the Langenscheidt Translation Service. Translation regularly updated by Neil Mussett, 2010 juris GmbH, Saarbrücken.

which they agree that the thing remains in the possession of the transferor. Therefore, the agreement is sufficient for acquisition of ownership. This form of delivery of a thing correspondingly exists under BGB, which contains the same requirements.[34]

c) *Delivery of the thing by transfer of the indirect possession* – The law also allows delivery of a thing in such a manner that it remains in the possession of a third party. According to Art. 21 (4) LPORR: "If the third party is in possession of the movable property, delivery may be substituted by the owner assigning to the transferee the claim against the third party for the delivery of the movable property." According to this provision, the acquisition of ownership over movable things can be made even through legal title (agreement) only. Therefore, the right of possession is transferred through legal title (agreement) to the third person. This form of delivery of a thing existing under the BGB stipulates the same conditions for delivery of indirect possession when a third party holds the object in direct possession.[35] In such cases the owner transfers to the acquirer only the claim against the third party for delivery of thing.

5.1.4 Acquisition of ownership in good faith (*bona fide*)

In general, ownership can be transferred only by the factual owner of a thing. According to the LPORR ownership in movable property can, however, also be acquired in good faith when the acquirer takes ownership of property from a person who is not the owner, if the acquirer does not know that the thing does not belong to the transferor. In such case the aquirer acts in good faith. Art. 22 (1) LPORR states: "If the movable property transferred does not belong to the transferor, the transferee nevertheless acquires ownership, unless he is not acting in good faith at the time of the delivery." Acquisition of ownership in good faith could take other forms of delivery as follows:

a) Acquisition in good faith also applies in cases where at the time of the transfer of ownership the thing is not in the possession of the transferor but it is in the possession of the acquirer.[36]
b) Acquisition in good faith also applies in the case of delivery of possession in an indirect way. When the transferor does not have possession and is not the owner of the thing, the acquirer becomes the owner at the time of gaining indirect possession if he is acting in good faith.[37]
c) Acquisition in good faith in cases of transfer of claims against third persons for delivery of possession.[38]

Good faith is further defined in Art. 22 (5) LPORR, which states that "the transferee is not acting in good faith if he knows or as a result of gross negligence does not know that the

[34] Compare § 930 BGB: "If the owner is in possession of the thing, the delivery may be replaced by a legal relationship being agreed between the owner and the acquirer by which the acquirer obtains indirect possession."
[35] See § 931 BGB: "if a third party is in possession of the thing, delivery may be replaced by the owner assigning to the acquirer the claim to delivery of the thing."
[36] See Art. 22 (2) LPORR. According to this article in cases where the thing is in possession of the acquirer, to acquire ownership it is required that the acquirer is acting in good faith.
[37] Compare Art. 22 (3) LPORR, if movable property transferred pursuant to Art. 21 (2) LPORR (meaning acquisition through indirect possession) does not belong to the transferor, the transferee nevertheless acquires ownership, unless he is not acting in good faith at the time he obtains possession.
[38] Compare Art. 22 (4) LPORR, if the movable property does not belong to the transferor pursuant to Art. 21 (4) LPORR, the transferee nevertheless acquires ownership, unless he is not acting in good faith at the time when the transferor assigns the claim or the transferee obtains possession from the third party, unless he is not acting in good faith in this time.

movable property does not belong to the transferor". According to this provision, good faith does not exist:
a) if the acquirer (transferee) knows that the thing does not belong to the transferor or
b) through gross negligence does not know that the thing does not belong to the transferor.
When the acquirer has acted under the above circumstances, it is considered that he was acting in bad faith. Good faith acquisition is also possible under the German Civil Code.[39] The requirements to acquire ownership of movable property in good faith are similar in the LPORR and the German Civil Code.

5.1.5 The impossibility of acquisition of ownership in good faith over things lost without the will of the owner

Regardless of the previous circumstances where the acquirer may acquire ownership even if the thing does not belong to the seller provided he has acted in good faith, the law restricts this possibility if the thing has been lost without the will of the owner. Art. 23 (1) LPORR stipulates: "No good faith acquisition of ownership pursuant to Art. 22 is possible, if the property was stolen from the owner or has been lost in any other way, unless it is foreseen in Art. 33 of this law."[40] According to this article, even when the acquirer is acting in good faith he cannot become the new owner if the thing was stolen from or lost by the original owner. On the other hand, this rule does not apply in cases of money, bearer instruments or the transfer or property by way of public auctions (Art. 23 (2) LPORR). The same rule applies under the German Civil Code, which takes a similar approach.[41] The exception for money, bearer instruments or the transfer or property by public auctions is applicable because money and negotiable instruments are meant to circulate as freely as possible. As a result, both codes prevent any acquisition of ownership of stolen or lost things of the owner. Some exceptions are foreseen providing that, under some circumstances, a finder may acquire ownership of the found thing.

6. Extinguishing third party real rights of a transferred thing

Art. 25 LPORR covers the extinguishing of real rights of third parties in cases of acquisition of ownership of movable property. Art. 25 LPORR states: "If a transferred thing is encumbered with a third party right, this right is extinguished upon acquisition of ownership toward that thing." For third party rights to be extinguished, good faith of the acquirer is required. Art. 25 (2) LPORR specifies that third party rights are not extinguished if the acquirer was not in good faith at the time of acquisition of ownership. Under German law

[39] See § 932 BGB "(1) As a result of a disposal carried out under section 929, the acquirer becomes the owner even if the thing does not belong to the alienor, unless the alienor is not in good faith at the time when under these provisions he would acquire ownership. In the case of section 929 sentence 2, however, this applies only if the acquirer had obtained possession from the alienor. (2) The acquirer is not in good faith if he is aware, or as a result of gross negligence he is not aware, that the thing does not belong to the alienor." See also § 933 and 934 BGB.
[40] Compare Art. 33 LPORR. This article regulates the acquisition of ownership over the lost thing. In case of lost things Art. 33LPORR has to be applied. The finder has the right to find items according to the rules provided in Art. 33 LPORR and not under the rules of acquisition of ownership in good faith.
[41] Compare § 935 BGB which stipulates: "The acquisition of ownership under § 932 to 934 (it refers to the acquisition of ownership in good faith) does not occur if the thing was stolen from the owner, is missing or has been lost in any other way. The same applies where the owner was the indirect possessor, if the possessor has lost the thing. These provisions do not apply to money or bearer instruments or to things that are alienated by way of public action or in an auction pursuant to § 979 (1a)."

the extinguishing of third party real rights in a thing is covered in § 936 BGB that states: "If an alienated thing is encumbered with the right of a third party, the right is extinguished on the acquisition of ownership". However, German law specifies cases in which the acquirer has to have direct possession or indirect possession of the thing. In all cases, however, third party real rights are not extinguished if the acquirer is not acting in good faith.[42] According to § 936 (3) BGB, a real right that belongs to a third party possessor of the thing is not extinguished despite the fact that the acquirer acting in good faith. Although, both codes stipulate the extinguishing of third party rights, the LPORR contains more general rules providing that, upon the acquisition of ownership by the acquirer, the third party rights are extinguished except in cases when acquirer was not acting in good faith. On the other hand, the German law contains more specific rules referring to each case of acquisition of ownership requiring good faith, but it excludes cases of third party rights being extinguished when such rights belong to the third party that is in possession of a thing.

7. Presumption of ownership for the possessor of the movable property

In contemporary civil codes the general rule is that possession is protected by law and the possessor is presumed to be the owner of movable property.[43] According to the LPORR every possessor of movable property is presumed to be the owner, unless it is proved otherwise. This rule is foreseen in Art. 26 LPORR, which states: "It is presumed in favour of the movable possessor of a movable thing that he is the owner of a thing." Art. 26 (2) sentence 2 excludes such presumption if a thing is stolen from the former possessor, he misplaces it or he otherwise involuntarily loses possession over the thing.[44] This rule is not acceptable for money or a bearer instrument, even though the possessor is acting in bad faith (Art. 23 (2) LPORR).

8. Acquisition of ownership over fruits

According to Art. 27 (1) LPORR, the fruits of movable property belong to the owner of the thing unless otherwise provided by law or agreement. The possessor who possesses the thing as a proprietary possessory is presumed to be the owner of fruits in the time of separation of fruits from the thing. However, this is not always the cause because Art. 27 (2) sentence 2 LPORR specifies: "Acquisition of ownership of the fruits is not possible if the proprietary possessor is not in good faith at the time when he acquires proprietary possession or learns of the defect of his right before the separation of the fruits from the property." The German Civil Code follows the same approach in § 953 BGB, which states: "Products and other components of a thing, even after separation, belong to the owner of the thing, unless § 954 to 957 lead to a different conclusion." This means that fruits belong to the owner of the property unless real rights in a thing are created for another person according to § 954 to 957 BGB.

[42] Compare § 936 (2) BGB: "The right of the third party is not extinguished if the acquirer, at the time conclusive under subsection 1 above, is not in good faith with regard to the right."
[43] See Mattei, Ugo, Basic Principles of Property Law: A Comparative Legal and Economic Introduction, London 2000, pp. 109-110.
[44] The second sentence which stipulates "he lost it or otherwise involuntary lost possession over the thing" speaks for the cases when the thing is taken away from the former possessor by force or other measures that do not express his will.

9. Original acquisition of ownership

9.1 Acquisition of ownership by prescription (in Albanian *parashkrimi*)

Prescription is the original form of the acquisition of ownership. This possibility is provided by Art. 28 (1) LPORR. It states that "a person who has a movable property in his proprietary possession[45] for a period of ten uninterrupted years acquires ownership of the property at the end of the ten years period if at the beginning and during the ten year period he was not aware that he was not entitled to ownership of the movable property". It is important to emphasize that this provision is also influenced by the German Civil Code[46] because the LPORR extends the period of prescription to ten years as it is under German law, which differs from the old approach in Kosovo that the prescription period was 3 years in case of legal possession and good faith and 10 years in case of only good faith.[47] The acquisition of ownership by prescription requires:

a) the possession of a thing continuously (uninterrupted time),
b) 10 years period,
c) good faith.

The law defines good faith in Art. 28 (2) LPORR, which states: "Prescription is excluded if the person on acquiring proprietary possession was not in good faith or if he discovers during the ten year period that he is not entitled to the ownership of the movable property." Consequently, the LPORR does not recognize the acquisition of ownership if the person in possession of the thing is in bad faith. In this way the legislator wanted to protect the owners by excluding any possibility of acquisition of ownership by any a person who knows that the thing does not belong to him or her. The intention of this provision is to protect the owner. The difference between the new law and the old law in Kosovo is that the new one extends the prescription period from 3 to 10 years in cases *bona fide* possession excluded the possibility of acquisition of property by prescription in cases of a bad faith possessor.
According to Art. 28 (c) LPORR, if property is acquired by prescription in good faith, all third party rights will be extinguished. The rights of third persons are, however, not extinguished if the person who becomes the owner of the property by prescription is not in good faith.

9.2 Acquisition of ownership in joined movable property

According to Art. 29 LPORR, if movables that belong to different owners are joined in such a way that they became a component part of a single movable property, the previous owners become co-owners of that property. This rule applies in cases where it cannot be determined which thing that has lasted so far remains the main thing. The participation in co-ownership in the new item is determined in proportion to the value of items at the time

[45] The expression "proprietary possession", is used with the purpose to clarify that in these cases the possessor is a person who possess a thing as owner or he believes that he is the owner. This expression is also used to distinguish proprietary possession from other forms of possession. The expression "proprietary possession" is used also in § 872 BGB: "A person who is in possession of a thing intending to deal with it as owner is called "proprietary possessor" (*Eigenbesitzer*).
[46] Compare § 937 BGB: "A person who has a movable thing in his proprietary possession for ten years acquires the ownership (acquisition by prescription). Acquisition by prescription is excluded if the acquirer on acquiring proprietary possession is not in good faith or if he later discovers that he is not entitled to the ownership."
[47] See Law on Basic Property Relations, OG, SFRY, no. 6/80, Art. 28.

of joining (Art. 29 (1) LPORR). On the other hand, in cases when movables are joined but one of the items can be separated or remain as the main item, the owner of the main thing becomes the owner of the joined movables. As a result, the owners whose property ceases to exist are entitled to compensation from the new owner in an amount equal to the value of their property (Art. 29 (2) LPORR). The cessation of ownership of a movable property causes the cessation of all other rights over that property (third party rights). Therefore, this rule does not apply if the owner of an encumbered property becomes the owner or co-owner of the new single property. In these cases the rights of third persons continue to remain (Art. 29 (3) LPORR). In the German Civil Code, the same approach is provided for acquisition of ownership of the joined movable property.[48] The person who becomes the owner is obligated to compensate the third party rights which ceased to exist as a result of joined movable property (including mixed properties and processing treated below) according to § 949 and 951 BGB.

9.3 Acquisition of ownership over mixed properties

Art. 30 LPORR contains a rule on acquisition of ownership in cases of mixed movables. According to Art. 30 (1) LPORR, if movables of different owners are mixed or comingled in a way that cannot be separated or such separation would entail disproportionately high cost, the provisions of Art. 29 LPORR (relating to joined properties) will be applied *mutatis mutandis*. The German Civil Code also contains specific rules for mixed movable property. § 948 (1) states: *"*(1) If movable things are inseparably intermixed or comingled with each other, the provisions of section 947 (regarding joined movables) apply with the necessary modifications. (2) The situation is equivalent to inseparability if the separation of the intermixed or mingled things would entail disproportionately high costs". Based on the identical content and language formulation, there is no doubt that this provision is clearly influenced by BGB.

9.4 Acquisition of ownership by processing

A person who creates new movable property through processing or transformation of his own materials acquires ownership over the new property created by processing. Art. 31 (1) LPORR regulates the issue of gaining ownership over movable property when the creator of a new thing used his material to create a new thing. In this case he also acquires ownership over the new thing. In cases where a new thing is created by using another person's material, the creator acquires ownership over such thing, unless the value of processing or modification is substantially less than the value of the material from which a new thing is created. If the creator becomes the owner of a new thing, the owner of the material is entitled to compensation.[49] If the value of the processing or transformation activity is exactly equal to the material used, both parties will acquire joined ownership over the new thing in equal proportions (Art. 31 (3) LPORR). Furthermore, Art. 31 (4) LPORR discusses other

[48] Compare § 947 BGB: "(1) If movable things are combined with each other in such a way that they become essential parts of a uniform thing, the previous owners become co-owners of this thing; the shares are determined by the relationship of the value that the things have at the time of combination. (2) If one of the things is to be seen as the main thing, its owner acquires sole ownership."

[49] Compare Art. 31 (2) LPORR. This rule should be interpreted in connection to the paragraph 5 of this artivl which states: "The owner of the new property is obligated to compensate any third parties rights for the loss of their rights".

forms of processing, including writing, drawing, painting, engraving, or any similar processing of the surface. In all cases where ownership over the new thing is acquired, real rights held by third parties over the material are ceased, but the owner of the new property is obligated to compensate any third persons for the cessation of rights over the material (Art. 31 (5) LPORR). These provisions are similar to the provisions of the former Law on Basic Property Relation and also contain elements of the BGB.[50] Although the language contained in § 950 BGB is shorter than that contained the LPORR, in substance it covers the same issues with regard to the acquisition of ownership over processing property within the scope of Art. 31 LPORR.

9.5 Acquisition of ownership over ownerless movables

The LPORR contains provisions which regulate the acquisition of ownership over ownerless things, unless prohibited by law. Any movable property is considered without owner if the owner of the thing gives up possession of the property with the purpose of abandoning ownership (Art. 32 (1) and (2) LPORR). Art. 32 (2) last sentence LPORR discusses the abandonment of a thing by the owner. The law contains a provision in Art. 35 LPORR regarding abandoning ownership, but the provisions of Art. 32 (2) LPORR refer to abandonment of possession for the purpose of abandoned ownership. On the other hand, Art. 35 LPORR uses the term abandonment of ownership explicitly (in a declarative way). According to these two provisions, a thing becomes ownerless in two cases:

a) where the owner gives up possession over the thing with the purpose of abandoning his ownership,
b) where the owner explicitly declares that he abandons ownership.

In both cases, ownership may be acquired by other persons. In addition, Art. 32 (3) and (4) LPORR contain rules for specified cases of acquisition of ownerless animals and bees. A domesticated animal becomes ownerless if it gives up the habit returning to the place provided for it (Art. 32 (3) LPORR). On the other hand, the acquisition of ownership over ownerless bees is possible if: a) the bee lives in the wild and b) the owner fails to pursue it within forty-eight hours and the new whereabouts are not marked. We have to point out that this approach is similar to the German Civil Code.[51]

9.6 Acquisition of ownership over found things

The LPORR contains a specific provision that in principle found things should be notified to the owner. Art. 33 (1) LPORR states: "A person who finds lost movable property and takes possession of it must notify the person who lost the property or the owner of that property without undue delay." If the identity of the owner or a person who lost the property is not known, the finder must notify the competent authorities without undue delay. This obligation does not exist if the value of the lost thing is not over 10 EUR (Art. 33 (2) LPORR). In addition to the notification, the finder has a duty to keep the found property in

[50] Compare Law on Basic Property Relation of 1980 and § 950 BGB which states: "(1) A person who, by processing or transformation of one or more substances, creates a new movable thing acquires the ownership of the new thing, except where the value of the processing or the transformation is substantially less than the value of the substance. Processing also includes writing, drawing, painting, printing, engraving or a similar processing of the surface. (2) On the acquisition of ownership of the new thing, the existing rights in the substance are extinguished."

[51] For more information see § 959, 960 and 961 BGB.

safe custody. If keeping property in safe custody caused greater expenses, the finder is obligated to deliver it to the competent authority, which can put it for public auction (Art. 33 (3) LPORR). Over the period of one year from the date of notification to the competent authorities the finder acquires ownership over the found thing, unless within that time the owner has been known or reported to the authorities. If ownership is acquired over a lost thing, all other rights on that property ceased to exist (Art. 33 (4) LPORR). According to Art. 33 (5) LPORR, if the finder has not become the owner, he is entitled to compensation from the entitled persons for receiving that property as follows: 5% if the value of the found property is up to 500 EUR; 3% if the value of the found property is over 500 EUR and 3% for found animals. The solutions regarding found things are similar to those in the German Civil Code.[52]

9.7 Acquisition of ownership over found treasury

According to Art. 34 LPORR, if property of exceptional value is found that was hidden for such a long time that the owner can no longer be ascertained, ownership over that property is acquired as follows: one third by the discoverer, one third by the owner of the immovable property on which the treasure was hidden, and one third by the state. This solution also applies under the German Civil Code with the exception that the value of the found treasure is divided into only two parts: one half for the finder and one half for the owner of the immovable property on which the treasure was found.[53]

10. Acquisition of ownership over immovable property[54]

For the acquisition of ownership over immovable property under the LPORR, two conditions are required: legal title (*ius titulus*) in the meaning of an obligatory contract as the reason of the transfer (*causa*) and the acquisition form (*modus aquirendi*), which is the registration of title. These preconditions are also required under the § 873 BGB, again using a differed concept of legal title as an abstract agreement to transfer ownership, which is separated from the *causa*. According to the Art. 36 (1) LPORR, "the transfer of ownership of an immovable property requires a valid contract between the transferor and the transferee as a legal ground and the registration of the change of ownership in the immovable property rights register". Accordingly, for acquisition of ownership in immovable property, a valid legal transaction (*causa*) between transferor and transferee is required, which is the legal basis for the transfer of the ownership and the registration of ownership in the immovable property registry. In this regard, for the transfer of ownership the law requires that the agreement for the transfer of ownership needs to be in writing and concluded by both parties (transferor and transferee) in the presence of both parties before a competent court or a notary.[55] The transfer of ownership requires expression of will of both parties in the presence of a competent authority. Under German law, all changes to rights in land (immov-

[52] Compare § 965, 966, 967, 970, 971 and 973 BGB.
[53] Compare § 984 BGB.
[54] LPORR uses the term "immovable", which is specifically defined in Art. 10. This differs from the German Civil Code, which does not contain a definition of "immovable" but only a definition of "land", which means a peace of land together with its components (§ 94 BGB).
[55] The Albanian version the law uses the term "competent authority" which means that the contract can be signed before a court or a notary office.

able) – property rights and other rights and any transfer or encumbrance – are subject to a uniform principle of law provided in § 873 BGB that these legal acts do not depend on an underlying contract. § 873 (1) BGB states: "The transfer of the ownership of a plot of land, the encumbrance of a plot of land with a right and the transfer or encumbrance of such a right require agreement between the person entitled and the other person on the occurrence of the change of rights and the registration of the change of rights in the Land Register, except insofar as otherwise provided by law." As was explained earlier under the principle of abstraction, the agreement for transfer of ownership does not depend on the sale contract. This is an independent contract (agreement) for transfer of ownership. § 873 (2) BGB provides that such an agreement has to be submitted to the Land Registry in accordance with the Land Register Law (*Grundbuchordnung*). It is also required that the declaration of conveyance for transfer of ownership be declared in the presence of both parties before a notary,[56] which is the same solution as provided under Kosovo law. The entry in the land register is not merely a declaratory act but also an essential condition for effectuating a change in legal position. In both pieces of legislation, the registration of title is a constitutive act, namely the acquisition form of ownership (*modus aquirendi*).

10.1 Extension of ownership over immovable property

The ownership of immovable property includes the area above and below the surface of the immovable property if there is an interest for its performance, unless specific legislation and third party rights do not provide otherwise (Art. 37 LPORR). This article defines the principle that unity of ownership exists in immovable property, which means that the owner of the land is the owner of the land surface parts and parts under the earth surface (*superficios solo cedit principle*). However, this right is limited by the rights arising from special laws and the rights of third persons.[57] Ownership of immovable property extends also to movable property and accessories that are determined to be a part of such immovable property.[58] The unity of ownership of land, namely the principle *superficios solo cedit*, can also be found in German law, which includes land and other components permanently connected to the land, including buildings.[59] Thus, unity of ownership is provided under § 905 which

[56] Compare § 925 (1) BGB: "(1) The agreement between the alienor and the acquirer (declaration of conveyance) necessary for the transfer of ownership of a plot of land under section 873 must be declared in the presence of both parties before a competent agency. Any notary is competent to receive the declaration of conveyance, notwithstanding the competence of other agencies. A declaration of conveyance may also be made in an in-court settlement or in an insolvency plan that has been finally and non-appealably confirmed."

[57] In particular laws can be provided for restrictions in exercising ownership over immovable property. For example, the mining law anticipates the state right of mineral resources or restrictions of ownership for the purposes of public interests. On the other hand, if immovable property is encumbered with rights of third persons, for example the right to built, the right of servitude, etc., then the right of ownership is restricted by these rights and cannot be exercised in such a manner that can damage the rights of third persons.

[58] Art. 38 and 39 in the connection to the Art. 13 and 14 LPORR.

[59] Compare § 94 (1) LPORR: "(1)The essential parts of a plot of land include the things firmly attached to the land, in particular buildings, and the produce of the plot of land, as long as it is connected with the land. Seed becomes an essential part of the plot of land when it is sown, and a plant when it is planted. (2) The essential parts of a building include the things inserted in order to construct the building." § 93, specifies: "Parts of a thing that cannot be separated without one or the other being destroyed or undergoing a change of nature (essential parts) cannot be the subject of separate rights." The more specific rule regarding the unity of ownership is specifies in § 905 BGB: "The right of the owner of a plot of land extends to the space above the surface and to the subsoil under the surface. However, the owner may not prohibit influences that are exercised at such a height or depth that he has no interest in excluding them."

states: "The right of the owner of a plot of land extends to the space above the surface and to the subsoil under the surface. However, the owner may not prohibit influences that are exercised at such a height or depth that he has no interest in excluding them". There is an exception of the rule of unity of ownership over land and its components if another person's real rights are created in accordance to the law.[60]

10.2 Acquisition of ownership over immovable property by prescription

The LPORR provides acquisition of ownership over immovable property by prescription for a period of 20 years and only if the acquirer is acting in good faith. According to Art. 40 (1) LPORR, a proprietary possessor acquires ownership of an immovable property, or a part thereof, after twenty years of uninterrupted prescription. Consequently, ownership over immovable property can be acquired if the following terms are met:

a) uninterrupted possession of the immovable property for a period of 20 years, and
b) good faith of the acquirer.

Compared to the old law in Kosovo, the new law extends the period of time of acquisition of ownership by prescription from 10 to 20 years in case of good faith, and it does not recognize the acquisition of ownership by prescription in bad faith. Therefore, this rule has some similarities to German law with some exceptions. Under the German law, this solution does not exist in such form, but § 927 BGB provides that "the right of the owner of a plot of land may be excluded by public notice procedure, if such property was in possession of another person for thirty years, respectively the possessor may acquire the ownership. The period of possession is calculated in the same way as the period for acquiring a movable thing by prescription."[61]

10.3 Acquisition of ownership in immovable property by prescription through registered proprietary possession

The acquisition of ownership by prescription in immovable property is also possible through registration of possession in the immovable property rights register. A proprietary possessor acquires ownership of immovable property or a part thereof after 10 years of uninterrupted possession if he is registered as the proprietary possessor in the immovable property rights register and no objection against this registration is announced during this period (Art. 40 (2) LPORR). According to this article, ownership is acquired if the following terms are met:

a) uninterrupted possession of immovable property for 10 years,
b) registration of proprietary possession in Cadastre, and
c) no objection against this registration within 10 years.

[60] § 95 (1) BGB: "The parts of a plot of land do not include things that are connected with the land only for a temporary purpose. The same applies to a building or other structure that is connected with a plot of land belonging to another by a person exercising a right over that land."

[61] § 927 (1) and (2) BGB: "(1) The right of the owner of a plot of land may, if the plot of land has been in the proprietary possession of another for thirty years, be excluded by public notice procedure. The period of possession is calculated in the same way as the period for acquiring a movable thing by prescription. Where the owner is registered in the Land Register, the public notice procedure is admissible only if he is dead or missing and a registration in the Land Register that required the approval of the owner has not been made for thirty years,
(2) The person who obtained the exclusory order obtains ownership by having himself registered in the Land Register as owner."

Unique in Kosovo, this law is intended to convert legal possession of immovable properties to the person who has a so-called Possessory Document (in Albanian *Fleta Poseduese*) – the only document issued until the new law came into force – which may serve for proving ownership. This situation was inherited from the property rights regime in the territory of Kosovo when it was still part of the former Yugoslav system that required the establishment of Land Books in all the territory of the former Yugoslavia and issuing a document entitled *Tapia* (*Tapou*) as a proof of ownership. But such registers were in fact not formed in the majority of the territory of Kosovo. Instead, the Cadastre Registry was established in Kosovo (for the purposes of tax payment, geodesy, and so on) in which all types of immovable property are registered along with all the characteristics of such properties, including the legal possessor (person who bought property with legal contract or through succession), but they could not be registered as an owner because of the lack of the Land Books. Thus, the *Possessory Document* was issued as proof of legal possession, which is not formally the same but is essentially similar to the ownership document.

10.4 Acquisition of ownership by prescription through registration of ownership in property rights register

Art. 41 LPORR regulates the acquisition of ownership by a person who is not the owner but has been registered as the owner in the property rights register, with the precondition that the rights are registered, the rights remain registered for 20 years, and no objection against the registration are raised. Ownership can be acquired if:

a) there exists a registration of ownership by a person who is not the owner,
b) the registration remains for 20 years,
c) the thing is possessed for 20 years,
d) no objections are raised against the registration within the 20 year period.

This is a very similar approach to German law, with the exception that the period of prescription in the BGB is 30 years.[62] Art. 41 LPORR favours a person who is registered as the owner of an immovable. He or she may gain ownership without legal title (*ius titulus*) but solely through possession of a thing. However, this requires that, in addition to registration for 20 years, the person has *de facto* possession during the same period of time. The LPORR does not contain any reference to prescription in good faith. This rule is nearly the same as in the old law in Kosovo that recognized acquisition of ownership if the possessor continually possessed an immovable for 20 years and was acting in good faith. Contrary to the old law, the LPORR does not require good faith, but instead registrations of ownership in the immovable property register.

10.5 Abandonment of ownership over immovable property

The abandonment of ownership of immovable property requires that the owner declares his or her wish to abandon the ownership to the competent authorities and this declaration is registered in the property rights register. Consequently, ownership is transferred to the

[62] § 900 (1) BGB states: "A person who is registered as the owner of a plot of land in the Land Register without having acquired ownership acquires ownership if the registration has existed for thirty years and he has had the plot of land in proprietary possession in this period. The thirty-year period is calculated in the same way as the period for acquiring a movable thing by prescription. The running of the period is suspended as long as an objection to the accuracy of the registration is entered in the Land Register."

competent authorities (municipalities) in the territory in which the immovable property is located (Art. 42 LPORR). This rule is copied from the BGB.[63]

11. Conclusion

The Law on Property and Other Real Rights of Kosovo (LPORR) provides a new comprehensive legal basis. Although the new law retains some solutions from the old law as well as including some other approaches found in other jurisdictions e.g., French and Austrian law, the content of the law was largely influenced by the German Civil Code. Both the Kosovo and German laws regulate many institutions in the same or a similar way. However, the BGB contains some additional specifics. Some of the differences and similarities between the LPORR and the German Civil Code are as follows:

- The concept of ownership in both laws is a comprehensive property right of the owner including *ius utendi*, *ius fruendi*, and *ius disponendi* or *abutendi*. The owner can use his or her property based on his or her will and exclude others; however, the limitations on ownership for a public purpose or due to the creation of rights of other persons can also be established by law. Ownership can be acquired over a thing. The term thing in the LPORR includes corporal and incorporeal things. It has, however, excluded intellectual property because that subject should be regulated by a special law. The approach of the BGB is narrower. In German law a thing (*Sache*) includes only corporal objects. Both the LPORR and the BGB make a clear distinction between movable and immovable property. In German law the term "immovable" refers to land, which is the same concept as in the LPORR which contains a definition of immovable property. In both codes, immovable property (land) includes land and other objects permanently connected to the land, including buildings, but do not include objects attached to it temporarily. Other things that do not fall within the scope of the definition of immovable property are deemed to be movable. The concept of movable property under LPORR is defined as follows: "Movables are independent corporal objects that are not permanently attached to the ground or a part of the ground, and are generally capable of being moved". This is a similar definition as contained in the French Civil Code. Consequently, the LPORR contains a combination of concepts on immovable and movable property that can be found in German and French law.
- In regard to the acquisition of ownership over movable property through legal transactions, both laws require two conditions: 1) an agreement (in Kosovo Law *puna juridikean* agreement and will *ius titulus*) and 2) the delivery of a thing (*modus acquirendi*). But the German law is unique in this sense due to the composition of the two specific principles, the Principle of Abstraction (*Abstraktionsprinzip*) and the Principle of Separation (*Trennungsprinzip)*. Based on these principles, the contract of sale is separate from the contract for transfer of ownership. Respectively, the contract for transfer of ownership is separate and independent from the contract of sale, which can be valid or invalid irrespective of the validity of the contract of obligations. As a result, both contracts are required in ownership transactions: the sale contract which is only an obligatory contract

[63] Compare § 928 BGB: "(1) The ownership of a plot of land may be relinquished by the owner declaring the waiver to the Land Registry and the waiver being registered in the Land Register. (2) The right to appropriate the relinquished plot of land belongs to the fiscal authority of the Land in which the plot of land is situated. The fiscal authority acquires ownership by having itself registered in the Land Register as owner."

that gives to the buyer the right to seek the transfer of ownership from the owner if he pays the purchase price and the contract for transfer of ownership. In contrast, the Kosovo law requires only an underlying contract (e.g. a contract of sale), so that the transfer of ownership of a thing depends on the validity of the underlying obligatory contract (*causa*).

- The delivery of a thing can occur in different forms, which in both codes are very similar. This shows the influence of the BGB in Kosovo law, including the formulations and the legal approaches. The similarities are very obvious in all forms of delivery including fictive and indirect delivery of possession.
- The rules regarding the acquisition of ownership over movable property when the acquirer is acting in good faith are governed by similar conditions in both the LPORR and the German Civil Code. In both laws, acquisition of ownership from a non-owner is in principle possible, if the transferee acts in good faith. However, ownership of a lost or a stolen thing cannot be acquired. Upon the acquisition of ownership by the acquirer, third party real rights in movables will be extinguished if the acquirer was acting in good faith. The BGB knows an exception if the right is held by a third party possessor. In such cases third party rights are not extinguished. The proprietary possessor of a thing is presumed to be the owner in both laws unless argued otherwise. In principle, the fruits belong to the owner, unless another person's real rights are created.
- The original acquisition of ownership over movable property – including prescription, acquisition of ownership over joined property, comingling and processing of property, found things and found treasury – find approaches in Kosovo law that are very similar to those in the BGB, showing that the BGB has influenced the terminology and the content of the LPORR. Specifically, the time period of prescription in good faith is extended in the LPORR from 3 to 10 years, which is the approach taken by the BGB. On the other hand, the bad faith prescription is no longer recognized under the new law in Kosovo. In regard to the other original forms of acquisition, although the approaches used were taken from the old law in Kosovo, the same approaches can be found under BGB. Furthermore, the legal formulations of the LPORR are influenced by the BGB provisions.
- For the acquisition of ownership over immovable property through legal transactions, both laws require two conditions: an agreement (*ius titulus*) and the entry of legal changes in the Immovable Rights Registry (Land Registry) as a form of acquisition (*modus acquirendi*). Concerning the first condition, the German law contains the particularity that the contract for transfer of ownership is independent from the contract of sale. According to the principle of abstraction and the principle of separation, two contracts are required: the contract of sale and the contract for transfer of ownership. Ownership includes the surface above and below, thus creating unity of ownership – namely the principle of *superficies solo cedit* – unless another person's real rights are created by law.
- The acquisition of ownership by prescription is foreseen in both laws. German law, however, contains some specific provisions which are different from LPORR. The LPORR contains provisions which allow the acquisition of ownership over immovable property: If the possessor acting in good faith possesses the property for an uninterrupted period of 20 years, he or she will acquire ownership over the possessed property. A similar solution is found in the BGB, but the time period for prescription is 30 years and additional requirements need to be met. The LPORR also contains specific provisions which allow the acquisition of ownership by prescription in cases where the possessor of

immovable property has registered the possession in a specific Cadastre registry, which is distinct from the Immovable Property Rights Registry. The possessor may then acquire ownership over that property if such registration is not objected to with 10 years. Such rule does not exist under BGB. Another similarity between the two laws exists regarding the acquisition of ownership over immovable property through registration of ownership by the person without acquired ownership. If such registration continues to exist under the BGB for 30 years and under the LPORR for 20 years, there was no objection to such registration and such person possess that property during this time, he is considered to have acquired ownership. The BGB requires that such period be considered as a prescription for movable property (requiring good faith), however the LPORR does not contains such references. Finally, the rules regarding abandonment of ownership over immovable property are essentially similar in both jurisdictions.