

USUFRUCT IN CONTEMPORARY PROPERTY LAW

Usufruct is a form of personal servitude that grants its holder the right to use another person's property fully. It is a real right (*right in rem*) that originated in Roman law and has since been adopted and integrated into civil codes and property laws across Europe during the reception of Roman law. The right of usufruct has remained relevant and continues to play an important role in modern property law. This paper aims to provide a comparative overview of how usufruct is regulated within the legal systems of European countries, highlighting its main characteristics and shared features. The analysis will focus on the regulation of the usufruct right in Macedonian property law and explore potential improvements to facilitate its practical application.

Keywords: property law, servitudes, usufruct, rights in rem.

I. EMERGENCE OF THE RIGHT OF USUFRUCT

Usufruct, like all other traditional real rights, originates from Roman law. In the early development of Roman law, usufruct was defined as a right to fully use another person's property while preserving its substance. Later, this definition faced criticism for limiting the effective exercise of usufruct. The obligation of the usufructuary to preserve the substance of the property under usufruct was seen as unrealistic, as ordinary use inevitably affects the property's substance. Therefore, in later stages of Roman law development, a revised definition was introduced, describing the usufruct as a right to fully use another's property in a manner consistent with its nature¹. In Roman law, usufruct was classified as *jura in re aliena*, granting the usufructuary limited power over another person's property (*pars dominium*)².

Medieval law adopted usufruct from Roman law. However, the concept related to the nature of this right had to be adapted to the new socio-economic system of the time, which was based on ownership as a non-exclusive divided right (*dominium divisum*)³. Reflecting the idea of ownership as a divided right that grants different powers, usufruct was described as a limited proprietary power similar to a long-term lease and emphyteusis. Scholars note that comparing usufruct to a long-term lease and emphyteusis was not due to a misunderstanding of their nature but was an effort to integrate the right of usufruct into a legal system that was fundamentally

* Tina Pržeska, Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, email: t.przeska@pf.ukim.edu.mk, ORCID 0000-0002-3476-2789.

¹ Pugliese, G., On Roman Usufruct, *Tulane Law Review*, vol. 40, no. 3, 1965-1966, p. 526. Станојевић, О., *Римско право*, Београд, 1999, p. 226. Hebib, M., *Koncept i pravna priroda plodouživanja u rimskoj pravnoj tradiciji*, *Pravni vjesnik*, 2024, p. 32-33. DOI:10.25234/PV/28836.

² Mousourakis, G., *Fundamentals of Roman Private Law*, Springer-Verlag Berlin Heidelberg, 2012, p. 164. Tuccillo, F., *Algunas notas sobre las servidumbres prediales en la tradición romanística y en las modernas codificaciones*, *Ridrom*, Derecho Romano, Tradición Romanística y Ciencias Histórico-Jurídicas, Octubre - 2017, p. 100. Riggsby, A. M., *Roman Law and the Legal World of the Romans*, Cambridge University Press, 2010, p. 143. Kranli Bajram, E., *Special Features of Roman Servitudes*, *Iustinianus Primus Law Review*, Vol. 9 (2), 2018.

³ Живковска, Р., *Стварно право*, Европа 92, Скопје, 2005, p. 42. Бабић, И., *Грађанско право, Књига 2, Стварно право*, Београд • Нови Сад, 2012, p. 67. Kovačević Kuštrimović, R., Lazić, M., *Stvarno pravo*, Zograf, Niš, 2009, p. 66. 243. Pierre, B., *Classification of Property and Conceptions of Ownership in Civil and Common Law*, *Revue générale de droit*, 28(2), 1997, 243. DOI: <https://doi.org/10.7202/1035639ar>.

different from Roman law. Although these three rights were categorised together by legal scholars of the time, there were key differences in their primary functions. The main function of usufruct was to benefit the usufructuary, whereas emphyteusis aimed to benefit the landowner by securing land use for agricultural purposes. This does not mean that the holder of the right of emphyteusis gained no benefit from it; however, that was not its primary aim⁴. Perpetual usufruct on agricultural land was considered very similar to a long-term lease on land⁵.

During the medieval period, usufruct was used as a legal instrument to secure a lifelong enjoyment of property with the duty to preserve its substance. Aristocratic families gave donations to the Church, preserving the right of usufruct over the donation. Widows were given usufruct as a way to provide for their needs. Feudal lords gave their vassals usufruct as a reward for their service. Peasants were given usufruct as a guarantee that they could work the land and collect its fruits, etc⁶.

Gradually, as the feudal system began falling apart and trade relations started to develop exponentially in the cities, the shift towards a market-based economy was initiated. This prompted the need for rethinking the whole concept of ownership and other real rights. Scholars at the time revisited Roman law and used it as a blueprint for redefining usufruct. A variety of opinions emerged regarding the legal nature of usufruct. Eventually, at the beginning of the 20th century, scholars centred around three main views on what the legal nature of usufruct is. According to one view, usufruct was an independent right that encumbered the right of ownership. The second view was that usufruct was a segment of ownership, and the third view was that usufruct was a subtype of ownership established exclusively on the fruits of a fruit-bearing thing⁷. The first view about the nature of usufruct is undoubtedly inspired by Roman law, where usufruct was one of the rights established on another person's property and therefore encumbering that property. The second view seems inspired by the concept of divided ownership that prevailed in the medieval ages, and the third view embraces the idea that there could be variations of the right of ownership, with one right of ownership being more extensive, while other being more restrictive. Under this concept, usufruct was viewed as restricted ownership established strictly on the fruits.

In contemporary property law, the right of usufruct is not confused or in any way intertwined with the concept of ownership. Contemporary legal systems tend to treat the right of usufruct as an independent real right (*right in rem*), which entitles its holder to fully use an item or a right that is someone else's property, preserving its substance⁸. There are discussions on whether the right of usufruct can be viewed as an obligation similar to a lease. However, as most scholars point out, the way that the right of usufruct is defined, established and exercised directs towards it being a real right rather than an obligation⁹. Also, we must point out that the right of usufruct has specific characteristics that are not typical for real rights, such as being established as a right tied to a particular person and non-transferable in most legal systems.

⁴ Hebib, M., *op. cit.*, pp. 43- 44

⁵Suchoń, A., *Perpetual Usufruct of Agricultural Lands – Selected Legal and Financial Issues*, Journal of Agribusiness and Rural Development 4(34), 2014 (159-171), p. 160. DOI: 10.22004/AG.ECON.210301.

⁶ Berger, J., *Usufruct, a convenient way for circulating the unalienable properties of Church and State into aristocratic inheritance*, 2019, (halshs-04374076). Monod J-C., *From abuse to usufruct*, Esprit 2010/1 January, p. 156.

⁷ Hebib, M., *op. cit.*, pp. 44-45.

⁸ Kovačević Kuštrimović, R., Lazić, M., *op. cit.*, p. 189. Lehavi, A., *Property law in a globalizing world*, Cambridge University Press, 2019, p. 23. Sijf van Erp, S., Akkermans, B., *Property rights: a comparative view*, in Boudewijn Bouckaert (ed.), *Property Law and Economics*, Encyclopedia of Law and Economics, Second Edition, Edward Elgar Publishing Limited, 2010, p. 36.

⁹Pincheira Sánchez, H. P., *El usufructo y sus efectos tributarios*, Revista de Derecho Tributario Universidad de Concepción, RdDT Vol. 6, julio - diciembre 2019, pp. 28-57.

Regardless of its specific characteristics, the right of usufruct by nature closely resembles other real rights, not obligations.

II. USUFRUCT IN THE CIVIL CODES AND PROPERTY LAWS OF COUNTRIES IN EUROPE

In most European civil codes and property laws, the usufruct is regulated in the part of the code/law that governs real rights, which implies that it is treated as a real right (*right in rem*). The German Civil Code regulates usufruct as a real right (§ 1030), but also recognises a subtype of lease called usufructuary lease (§ 581).

- The Spanish Civil Code¹⁰ defines usufruct as a right entitling one person to enjoy another's property, subject to the obligation to preserve the form and substance of the property, unless he or she is authorised to do otherwise by law or by the legal act by which usufruct was established (Art. 467). Usufruct can be obtained by law, by a contract, a will, and by prescription (Art. 468). It can belong to multiple persons, each having the right to collect a portion of the fruits of the encumbered property simultaneously or successively. According to the Spanish Civil Code, usufruct can be time-limited and subject to conditions. Usufruct can be established on movable or immovable property, and over rights, excluding personal and non-transferable rights (Art. 469)

- When regulating the usufruct, the Italian Civil Code¹¹ states that it is a right entitling the usufructuary to use the property of another according to its economic purpose. The usufructuary may extract fruits and benefits from the encumbered property within the limits determined by the Code (Art. 981). Usufruct can be established by the will of the parties, by law or by prescription (Art. 978). This right is time-limited, and it cannot exceed the life of the usufructuary. Usufruct that is established in favour of a legal person cannot last more than thirty years (Art. 979). The Italian civil code allows the transfer of the right of usufruct by the usufructuary. When the usufructuary transfers his or her right of usufruct, he or she can do so within the timeframe that the right has been established in his or her favour (Art. 980). If the usufructuary decides to transfer the right of usufruct, he or she must notify the owner of the property; failing to do so brings liability for the usufructuary towards the owner.

- The Dutch Civil Code¹² defines usufruct as a right granting another person the right to use one's property and to enjoy the fruits produced by those assets (Article 3:201). Usufruct can be established by the will of the interested parties or by prescription (Art. 3:202). It can be established on behalf of one person, or on behalf of multiple persons who are entitled to exercise this right jointly or in succession. When the usufruct is established in favour of multiple persons successively, the second person who is in line to succeed the right of usufruct must exist at the moment this right is being established. Usufruct, as a time-limited right, cannot be established longer than the lifetime of the usufructuary. When the right of usufruct belongs to several persons jointly and the right in favour of one of them ceases, his or her share will be distributed proportionally to the other usufructuaries. In this case, usufruct can be terminated once the last usufructuary expires, unless it was agreed upon differently. Legal persons can also be usufructuaries, in which case the usufruct is terminated upon their dissolution, but it cannot exceed the time limit of 30 years after the day it was established (Art. 3:203)

- According to the French Civil Code¹³, usufruct is a right to enjoy the property of another in the same manner that the owner would do so, under the condition that its substance is preserved (Art. 578). Usufruct can be established by law or by a person's will. Any movable

¹⁰ Available at: [https://www.boe.es/eli/es/rd/1889/07/24/\(1\)/con](https://www.boe.es/eli/es/rd/1889/07/24/(1)/con)

¹¹ Available at: <https://www.gazzettaufficiale.it/dettaglio/codici/codiceCivile>.

¹² Available at: <http://www.dutchcivillaw.com/civilcodebook033.htm>.

¹³ Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/

or immovable property can be encumbered by usufruct. The right can be established momentarily or on a certain date. Usufruct can also be subject to conditions (Art. 578-581).

- In the Swiss Civil Code¹⁴, usufruct represents a type of personal servitude. According to the Swiss Civil Code, the right of usufruct entails complete enjoyment of the owner's assets. Usufruct may be established over movable and immovable property, rights or other assets. When usufruct is established on immovable property, it may be established so that it encumbers a particular part of the real estate (Art. 745). Usufruct can last until the death of the usufructuary. If the usufruct is established in favour of a legal person as a usufructuary, in that case, the right can last until the dissolution of the legal person, but no more than 100 years (Art. 749)

The Slovenian Property Code¹⁵ also defines usufruct as a personal servitude. Usufruct entitles the usufructuary to fully use the property of another, maintaining its substance (Art. 231). Usufruct can encumber movable or immovable property, a share in the property, or a right that can give fruits and other benefits. This right is not transferable. However, the usufructuary can cede the exercise of his or her right to another person. Multiple persons can jointly obtain usufruct, in which case they will exercise this right according to the shares they have (Art. 231). A specific part of a real estate can also be encumbered with usufruct, allowing for the joint use of the real estate by the owner and the usufructuary. When the owner and the usufructuary jointly use the real estate, their relationship is regulated under the provisions of the Code regulating co-ownership. As far as third parties are concerned, the real estate jointly used by the owner and the usufructuary is considered to be fully encumbered (Art. 232). Usufruct can be acquired based on a legal transaction or a court decision.

- According to the Croatian Ownership and Other Real Rights Act¹⁶, usufruct is a personal servitude entitling the usufructuary to use another person's property in accordance with its function, preserving its substance (Art. 203). Movable and immovable property, multiple things, consumable things and rights capable of giving fruits or other benefits can be encumbered. Usufruct may be established in favour of multiple persons, individually or jointly. In case of doubt on how the usufruct is established, it is presumed it is established individually with each usufructuary having an equal share in the right (Art. 203/5).

- The German Civil Code¹⁷ defines usufruct as an encumbrance that entitles a person to take emoluments of the property under usufruct. The usufruct can include the right to collect all emoluments of the encumbered property, or it may be restricted to individual emoluments. (§ 1030). Usufruct can be established over movable or immovable property, rights and assets. The German Civil Code also regulates usufruct as a subtype of a lease contract where the lessor has the duty to allow the lessee to use the property and to enjoy its fruits to the extent that falls under the rules of proper management. In return, the lessee is obligated to pay the lease or agreed rent (§ 581).

III. USUFRUCT IN MACEDONIAN PROPERTY LAW

In Macedonian property law, usufruct is regulated by the Ownership and Other Real Rights Act (Ownership Act – OA). Usufruct is defined as: "*a real right that authorises its holder (the usufructuary) to fully use a thing in accordance with its purpose, preserving its essence, without compensation*". From the analysis of the legal definition, we note that the content of the right of usufruct is the authorisation to fully use the encumbered property. The authorisation arising from the right of usufruct can be exercised by the usufructuary without

¹⁴ Available at: https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en.

¹⁵ Official Gazette of the Republic of Slovenia, No. 87/2002, 91/2013, 23/2020

¹⁶ Official Gazette of the Republic of Croatia, No. 91/1996.

¹⁷ Available at: https://www.gesetze-im-internet.de/englisch_bgb/index.html.

limitation, i.e. he or she can use the property in any way that is permitted and possible, in accordance with its nature and purpose, as long as it does not affect its essence. It is clear from the legal definition that the owner of the encumbered property does not have the right to demand compensation for the establishment of the right of usufruct.

The right to usufruct can be established over chattels and real estate, on multiple things or rights capable of bearing fruits or giving other benefits (OA, Art. 210)¹⁸.

According to the Ownership Act, for usufruct to be established, the item, or rather the collection of items, must be non-consumable by nature (Art. 210/2). If consumable items are given for usufruct, in that case, the usufruct is considered to be irregular, i.e. *quasi*-usufruct (217/1)¹⁹. Although the Ownership Act does not explicitly stipulate that the item subject to usufruct should be specified, this is understood because real rights are established and exercised in accordance with the principle of speciality²⁰. As a rule, the property under usufruct should be fruit-bearing. However, according to the Ownership Act, this is not a necessary condition for establishing usufruct, since the full use of the encumbered property authorises the usufructuary to derive “other benefits” from it that are not considered fruits. When the usufruct is established over a complex item, then the usufruct encompasses all its constituent parts, both main and secondary. The Ownership Act does not determine whether the subject of the right of usufruct can be a share in a co-owned property²¹. Most scholars hold the opinion that a share in a co-owned property can be encumbered with usufruct, considering that the owner can freely dispose of it and therefore give it for usufruct²². The possibility of establishing usufruct over a share in a co-owned property should also be accepted in Macedonian property law, since the Ownership Act also recognises the free disposition of shares of co-owned property (Art. 32). In the case where usufruct has been established over a share of co-owned property, the usufructuary is authorized to use that property to the extent to which the owner of the encumbered share of the co-owned property could do so.

Concerning the usufruct over rights, the Ownership Act stipulates that a right is eligible to be encumbered if it yields fruits or other benefits (Art. 210/2)²³. If usufruct is to be established over a right that does not bear fruit, then the usufruct is considered to be a *quasi*-usufruct (OA, 217/1). Even though the Ownership Act does not specify what type of right can be encumbered with usufruct, other than prescribing that it should bear fruit, we must underline that only rights that are transferable and from which fruits or other benefits can be derived (claims, intellectual property rights, etc.) can be given for usufruct²⁴. In contrast, rights that yield fruits or other benefits but are not transferable cannot be given for usufruct (personal servitudes, right to alimony, personal injury claims, etc.).

¹⁸ Comparatively, usufruct can be established on property masses as well. According to the German Civil Code, usufruct can be established on a part of the property or the estate of a certain person (§ 1085 and 1989). Similarly, the Swiss Civil Code determines that the subject of usufruct can be property masses (Art. 745).

¹⁹ Quasi-usufruct is recognised by many civil codes, such as the Italian Civil Code (Art. 995), the Swiss Civil Code (Art. 752), the French Civil Code (Art. 587), the Dutch Civil Code (Art. 3:215), the Spanish Civil Code (Art. 482), the German Civil Code (§ 1067) and others.

²⁰ Живковска, П., *op. cit.*, p. 31-32.

²¹ Unlike the Macedonian Ownership Act, the Croatian Ownership and Other Real Rights Act (Art. 200/1), as well as the Slovenian Real Property Code (Art. 231), clearly stipulate that the subject of the right of personal servitude, which includes usufruct, can be a share in a property.

²² Gavella, N., et. al., *op. cit.*, p. 38. Kovačević Kuštrimović, R. Lazić, M., *op. cit.*, p. 230. Бабић И., *op. cit.*, p. 245.

²³ Unlike the Macedonian Ownership Act, the German Civil Code contains special provisions regulating the usufruct of certain rights. The Code lists as rights on which usufruct can be established: claims consisting of certain performances (§ 1070), monetary claims (§ 1074), the right to a life annuity (§ 1073), the right to a real charge (§ 1080) and rights from securities to bearer or to order (§ 1081).

²⁴ Kovačević Kuštrimović, R., Lazić, M., *op. cit.*, p. 231.

The usufruct can be established by a contract, by a will or by prescription (OA, Art. 213/1). According to the Ownership Act, personal servitudes, which include usufruct, can be established in favour of a person who is in a “special relationship” with the owner of the encumbered property. Apart from this vague provision, the Ownership Act does not elaborate on which persons may be granted usufruct, so the question arises whether a usufructuary could only be a natural person or a legal person as well? Scholars believe that usufructuaries can be both natural and legal persons²⁵. While we concur that legal persons can be usufructuaries, we advise that the usufruct in favour of legal persons be legally limited to a shorter period of time, to protect the interests of the owner of the encumbered property²⁶. As for the provisions of the Ownership Act, they are contradictory and ambiguous in this regard. In Article 192(3), which defines personal servitudes, the general term “a person” is used, meaning any person (natural or legal). The use of the general term leads us to the conclusion that a usufructuary can be a natural or legal person. However, the provision of Article 209(1) of the Ownership Act states that personal servitudes can last until the death of their holder. Since only natural persons die, there is a dilemma about the true intent of the law. Additional confusion is introduced by the provisions of Article 219 of the Ownership Act, which regulate the termination of the right to usufruct. It is prescribed that the usufruct ceases with the death or dissolution of the usufructuary, indicating that a usufructuary can be both a natural and a legal person. In the interest of legal certainty, it is necessary to remove these ambiguities from the Ownership Act by closely regulating the manner and conditions under which legal entities can acquire usufruct, as is done in contemporary civil codes and property laws.

IV.CHARACTERISTICS OF USUFRUCT

By analysing the legal regulation of usufructs, one can see the characteristics of this type of servitude that influence the way in which it is established, exercised, and terminated. Those characteristics are: non-transferability, divisibility, appurtenance, time-limited, gratuitousness, independence and priority.

- Usufruct is a personally bound right. Usufruct is established to meet the needs of a specific person. The usufructuary is often a person who is in a special relationship with the owner of the encumbered property (family member, friend, business partner, etc.). As a result, usufruct is usually a non-transferable right²⁷. The Ownership Act explicitly states that usufruct is a non-transferable right (Art. 209/2)²⁸. However, this is not a general characteristic present in all legal systems. The Italian Civil Code allows for the transfer of the usufruct by the usufructuary (Art. 980), and so does the French Civil Code (Art. 595). According to the Dutch Civil Code, the usufructuary can transfer and even encumber his or her right of usufruct (Art. 3:223).

²⁵Kovačević Kuštrimović, R., Lazić, M., *op. cit.*, p. 228.

²⁶ Legal persons as usufructuary are recognised by the Italian Civil Code (art. 979), the French Civil Code (art. 619), the Spanish Civil Code (art. 515), the Slovenian Property Code (art. 227/2) and others. These codes restrict the duration of usufruct to a maximum of 30 years. On the other hand, the German Civil Code stipulates that the right of usufruct in favour of a legal person may last as long as the legal person exists (§ 1061). The Swiss Civil Code stipulates that the usufruct in favour of a legal person may last as long as the legal person exists, but not longer than 100 years (Art. 749/2).

²⁷ Pincheira Sánchez, H. P., *op. cit.*, p. 32. Verbeke, A-L., Verdickt, B., Maasland, D-J., *The many faces of usufruct*, In: Van Der Merwe C., Verbeke A-L. (eds.), *Time Limited Interests in Land, The Common Core of European Private Law*, Cambridge University Press, 2012, p. 37.

²⁸ Usufruct is a non-transferable right according to the Slovenian Property Code (Art. 230). The Swiss Civil Code and the Croatian Ownership and Other Real Rights Act do not explicitly state that usufruct is non-transferable, but it is implied since they only allow for the usufructuary to assign the exercise of this right. Usufruct is a non-transferable right under the German Civil Code if the usufructuary is a natural person (§ 1059).

When the usufruct is non-transferable, that means that this right cannot be inherited as well. The Ownership Act states that the usufruct right cannot be inherited, unless it was granted in favour of the heirs (Art. 209/3). Although the Ownership Act states that the usufruct right may be inherited if the owner of the encumbered property explicitly granted it to heirs of the usufructuary, we must point out that the usufruct is not actually being inherited, but rather it is established in favour of multiple persons in succession. As an example, the Spanish Civil Code states that the usufruct can be established in favour of multiple persons simultaneously or successively (Art. 469).

If usufruct is non-transferable, it also means that usufruct cannot be encumbered with other real rights. It cannot be pledged, nor given to another for usufruct. However, in legal systems where the right of usufruct can be transferred, it stands to reason that it can be encumbered as well. As it was previously mentioned, the Dutch Civil Code explicitly states that usufruct can be encumbered (Art. 3:223).

In legal systems where the usufruct is non-transferable, the usufructuary is allowed to assign the exercise of the right to another person. This is explicitly stated in the Swiss Civil Code (Art. 758) and the Slovenian Property Code as well (Art. 230/3). The Ownership Act does not have a specific provision on the matter. In theory, if the usufructuary enjoys complete freedom regarding the manner in which he or she will use the encumbered property, then that freedom should also include the freedom to assign the exercise of his or her right to another person²⁹.

- Usufruct is a divisible right, meaning it can be divided between multiple persons as co-holders of that right³⁰. The co-usufructuaries exercise the right proportionally to their share or jointly. The Ownership Act does not explicitly determine that multiple persons can hold a right to usufruct. Unlike the Ownership Act, the Obligations Act³¹ presumes that usufruct can be established in favour of multiple persons, allowing donors to jointly retain usufruct when gifting (Art. 1026/1). The Obligations Act also stipulates that a usufruct established in favour of the donor and his spouse, in the event of the death of one of them, the right shall belong in its entirety to the other (Art. 1026/2).

Irrespective of the fact that the Ownership Act does not specify, usufruct should be understood to be a divisible right, and as such, it can be established in favour of multiple people simultaneously or successively. Since the existence of the right to usufruct by several persons will inevitably create complex mutual relations between them, these relations must be regulated by the Ownership Act.

- The right of usufruct is appurtenant to the property it encumbers, as are all other real rights. Due to this, the transfer of ownership does not affect the right of usufruct. Any person who acquires ownership of the encumbered property is obligated to tolerate the usufruct. However, in practice, it is common for the usufructuary to contractually bind the owner to ask for permission if and when he or she decides to transfer the ownership right. In such cases, it is also stipulated that by permitting the transfer of ownership, the usufructuary relinquishes the right of usufruct. This does not apply to *quasi*-usufruct, nor does it apply to usufruct in legal systems where the usufructuary can be authorised to dispose of the encumbered property³².

²⁹ Gavella, N., et. al., *Stvarno parvo, Svezak drugi, II. izmijenjeno i dopunjeno izdanje*, Narodne Novine d.d., Zagreb, 2007, p. 37. Kovačević Kuštrimović, R., Lazić, M., *op. cit.*, 229. Verbeke, A-L., Verdickt, B., Maasland, D-J., *op. cit.*, p. 38. Pincheira Sánchez, H. P., *op. cit.*, p. 32.

³⁰N. Gavella, et. al., p. 37. Z. P. Rašović, *Stvarno pravo*, Beograd, 2005, p. 346.

³¹ Official Gazette of the Republic of Macedonia, No. 18/2001.

³² According to the Dutch Civil Code, the usufructuary can dispose of the encumbered assets if they are by function, intended to be alienated (Art. 3:212).

- Usufruct is a time-limited (temporary) right³³. The period of duration of usufruct is determined by the legal act that is the basis for its establishment (contract, will, etc.). According to the Ownership Act, usufruct lasts for the determined period, or until the death of the usufructuary (Art. 209/1). In general, usufruct can last at most until the end of the life of the usufructuary if he or she is a natural person. When the usufructuary is a legal person, the usufruct right can potentially last until its dissolution, but in most legal systems, it is restricted to a fixed time limit, for example, 30 years or 100 years or until its dissolution, whichever comes first. The ownership act does not state how long the usufruct acquired by prescription lasts. When no other timeline is determined, it needs to be assumed that the usufruct lasts until the death of the usufructuary if he or she is a natural person or until the dissolution of the usufructuary if it is a legal person.

- Usufruct is acquired gratuitously, i.e. without compensation. The Ownership Act specifically states that the owner does not have the right to ask for compensation for the establishment of the usufruct right (Art. 210/1). Considering that usufruct is established for the benefit of the usufructuary, it stands to reason that compensation is not to be expected.

- The usufruct is an independent right. Its exercise is not contingent on the actions of the owner or any other person. The owner is obliged to tolerate the exercise of the established right of usufruct and to refrain from actions that would violate it, but he or she is not obligated to assist in the exercise of this right. There are, however, exceptions to this. In some legal systems, the owner or the encumbered property cooperates in the exercise of the right of usufruct. For example, according to the Dutch Civil Code, when the usufructuary invests encumbered sums of money, the owner must be consulted (Art. 3:224).

- Usufruct has priority in relation to the right of ownership of the encumbered property. When usufruct has been established, the owner cannot claim direct possession of the encumbered property, nor can he or she use the property in any way. Due to this, the ownership of the encumbered property is referred to as nude ownership, void of any content³⁴. Even though the right of ownership is extremely restricted by the usufruct right, there are still some authorities that the owner can exercise³⁵. The owner can give permission or consent for certain actions of the usufructuary; he or she can collect extraordinary income from the encumbered property, such as rewards and premiums; if treasure is found on the property, the owner has the right to it, etc. In legal systems where the usufruct can be restricted on specific part of the real estate, the owner has the right to fully use the rest of the real estate.

V. CONCLUSION

Usufruct originates from Roman law. In the early development of Roman law, usufruct was defined as a right to fully use another person's property while preserving its substance. Roman law classified usufruct as *jura in re aliena*, granting the usufructuary limited power over another person's property (*pars dominium*).

In medieval times, usufruct was described as a limited proprietary power similar to a long-term lease and emphyteusis. During the medieval period, usufruct was used as a legal instrument to secure a lifelong enjoyment of property with the duty to preserve its substance.

³³ Verbeke, A-L., Verdickt, B., Maasland, D-J., *op. cit.*, p. 36. Pincheira Sánchez, H. P., *op. cit.*, p. 31. Veloso, Marcelino G. III., *Virtual Property Rights: A Modified Usufruct of Intangibles*, Philippine Law Journal, vol. 82, no. 4, June 2008, p. 71. Kent, Jeremy A., *Space Resource Development and Property - Clarifying Usufruct*, Journal of Air Law and Commerce, vol. 90, no. 1, 2025, p. 60.

³⁴ Verbeke, A-L., Verdickt, B., Maasland, D-J., *op. cit.*, p. 35. Erp, S., Akkermans, B., *op. cit.*, p. 37. Veloso, Marcelino G. III., *op. cit.*, p. 71.

³⁵ Lehavi, A., *op. cit.*, p. 23.

Contemporary legal systems treat the right of usufruct as an independent real right (*right in rem*), which entitles its holder to fully use someone else's property, preserving its substance.

In most European civil codes and property laws, the usufruct is regulated in the part of the code/law that governs real rights, which implies that it is treated as a real right (*right in rem*). The German Civil Code regulates usufruct as a real right and a subtype of lease - usufructuary lease.

In Macedonian property law, usufruct, regulated by the Ownership and Other Real Rights Act, is defined as: "*a real right that authorises its holder (the usufructuary) to fully use a thing in accordance with its purpose, preserving its essence, without compensation*". Usufruct can be exercised by the usufructuary without limitation.

The characteristics of usufruct that influence the way in which it is established, exercised, and terminated are: non-transferability, divisibility, appurtenance, time-limited, gratuitousness, independence and priority. Usufruct is a right that usually cannot be transferred. Usufruct is established to meet the needs of a specific person. The usufructuary is often a person who is in a special relationship with the owner of the encumbered property (family member, friend, business partner, etc.). Usufruct is a divisible right, meaning it can be divided between multiple persons as co-holders of that right. The right of usufruct is appurtenant to the property it encumbers. Usufruct is a time-limited (temporary) right. The period of duration of usufruct is determined by the legal act that is the basis for its establishment. Usufruct is acquired without compensation. The usufruct is an independent right. Its exercise is not contingent on the actions of the owner or any other person. Usufruct has priority in relation to the right of ownership of the encumbered property.

Bibliography:

1. Berger, J., *Usufruct, a convenient way for circulating the unalienable properties of Church and State into aristocratic inheritance*, 2019, {halshs-04374076};
2. Dutch Civil Code [Burgerlijk Wetboek]. Available at: <http://www.dutchcivillaw.com/civilcodebook033.htm>;
3. Erp, S., Akkermans, B., *Property rights: a comparative view*, in Boudewijn Bouckaert (ed.), *Property Law and Economics*, Encyclopedia of Law and Economics, Second Edition, Edward Elgar Publishing Limited, 2010;
4. French Civil Code [Code Civil Français], Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/;
5. Gavella N., Josipović T., Gliha I., Belaj V., Stipković Z., *Stvarno parvo, Svezak drugi, II. izmijenjeno i dopunjeno izdanje*, Narodne Novine d.d., Zagreb, 2007;
6. German Civil Code [Bürgerliches Gesetzbuch - BGB]. Available at: https://www.gesetze-im-internet.de/englisch_bgb/index.html
7. Hebib, M., *Koncept i pravna priroda plodouživanja u rimskoj pravnoj tradiciji*, Pravni vjesnik. 2024. DOI:10.25234/PV/28836.32-33;
8. Italian Civil Code [Codice Civile Italiano]. Available at: <https://www.gazzettaufficiale.it/dettaglio/codici/codiceCivile>;
9. Kent, Jeremy A., *Space Resource Development and Property - Clarifying Usufruct*, Journal of Air Law and Commerce, vol. 90, no. 1, 2025, pp. 41-72;
10. Kovačević Kuštrimović, R., Lazić, M., *Stvarno pravo*, Zograf, Niš, 2009;
11. Kranli Bajram, E., *Special Features of Roman Servitudes*, Iustinianus Primus Law Review, Vol. 9 (2), 2018;

12. Lehavi, A., *Property law in a globalizing world*, Cambridge University Press, 2019;
13. Monod J-C., *From abuse to usufruct*, *Esprit* 2010/1 January, pp. 152- 163;
14. Mousourakis, G., *Fundamentals of Roman Private Law*, Springer-Verlag Berlin Heidelberg, 2012;
15. Obligations Act [Закон за облигационите односи], Official Gazette of the Republic of Macedonia, No. 18/2001, 78/2001, 4/2002, 59/2002, 5/2003, 84/2008, 81/2009, 161/2009, 23/2013, 123/2013 and Official Gazette of the Republic of Macedonia, No. 215/2021, 154/2023;
16. Ownership and Other Real Rights Act [Zakon o vlasništvu i drugih stvarnim pravima], Official Gazette of the Republic of Croatia, No. 91/1996, 68/1998, 137/1999, 22/2000, 73/2000, 114/2001, 79/2006, 141/2006, 146/2008, 38/2009, 153/2009, 143/2012, 152/2014, 52/2025;
17. Ownership and Other Real Rights Act [Закон за сопственост и други стварни права], Official Gazette of the Republic of Macedonia, No. 18/2001, 31/2008, 92/2008, 139/2009, 35/2010.
18. Pierre, B., *Classification of Property and Conceptions of Ownership in Civil and Common Law*, *Revue générale de droit*, 28(2), 1997. DOI: <https://doi.org/10.7202/1035639ar>;
19. Pincheira Sánchez, H. P., *El usufructo y sus efectos tributarios*, *Revista de Derecho Tributario Universidad de Concepción*, RdDT Vol. 6, julio - diciembre 2019;
20. Pugliese, G., *On Roman Usufruct*, *Tulane Law Review*, vol. 40, no. 3, 1965-1966, pp. 523-554;
21. Riggsby, A. M., *Roman Law and the Legal World of the Romans*, Cambridge University Press, 2010;
22. Spanish Civil Code [Código Civil Español], Available at: [https://www.boe.es/eli/es/rd/1889/07/24/\(1\)/con](https://www.boe.es/eli/es/rd/1889/07/24/(1)/con);
23. Sjeff van Erp, S., Akkermans, B., *Property rights: a comparative view*, in Boudewijn Bouckaert (ed.), *Property Law and Economics*, Encyclopedia of Law and Economics, Second Edition, Edward Elgar Publishing Limited, 2010;
24. Suchoń, A., *Perpetual Usufruct of Agricultural Lands – Selected Legal and Financial Issues*, *Journal of Agribusiness and Rural Development* 4(34), 2014, pp. 159-171. DOI: 10.22004/AG.ECON.210301;
25. Swiss Civil Code [Schweizerisches Zivilgesetzbuch - ZGB], Available at: https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en;
26. Tuccillo, F., *Algunas notas sobre las servidumbres prediales en la tradición romanística y en las modernas codificaciones*, *Ridrom, Derecho Romano, Tradición Romanística y Ciencias Histórico-Jurídicas*, Octubre – 2017;
27. Veloso, Mercedes G. III., *Virtual Property Rights: A Modified Usufruct of Intangibles*, *Philippine Law Journal*, vol. 82, no. 4, June 2008, pp. 37-77;
28. Verbeke, A-L., Verdickt, B., Maasland, D-J., *The many faces of usufruct*, In: Van Der Merwe C., Verbeke A-L. (eds.), *Time Limited Interests in Land, The Common Core of European Private Law*, Cambridge University Press, 2012, pp. 33-56;
29. Бабић, И., *Грађанско право, Књига 2, Стварно право*, Београд • Нови Сад, 2012;
30. Живковска, Р., *Стварно право*, Европа 92, Скопје, 2005.