

PhD Tina Przeska¹

THING THAT MAY BE OBJECT OF CONTRACTUAL PLEDGE IN THE LEGAL SYSTEM OF REPUBLIC OF MACEDONIA

Objects of contractual pledge in the legal system of Republic of Macedonia may be movable and immovable things. In these cases, the contractual pledge may be instated on the entire object, more object together and on the ideal part of the object. When the object of contractual pledge is an immovable thing we have mortgage as a form of contractual pledge.

In order for a certain thing to become an object of a contractual pledge, two conditions must be met. The first condition is that the object must be owned by the pledge debtor² and the second condition is that the object should be in legal traffic.

1. We consider that the *legae* articles according to which the object of contractual pledge may only be things owned by the pledge debtor are completely just, as according to the Law on contractual pledge (Official Gazette of Republic of Macedonia, number 5/03), the owner is the only person that is entitled to dispose with the thing. Free disposition of ownership is determined by article 8, paragraph 1 of the Law on ownership and other real rights (Official Gazette of Republic of Macedonia, number 18/01) which states: *“The owner has the right to hold, use and dispose with the ownership of things, according to his/her own will, as long as it is not contrary to law, or rights of other persons”*.

Exception to the rule that the object of contractual pledge must be owned by the pledge debtor is prescribed by the Law on contractual pledge. There is a possibility for the pledge creditor to instate pledge on the object of his right of pledge (sup-pledge) (art. 10, paragraph 2).

2. The second condition – the object of contractual pledge must be in legal traffic, is also just, as things that are out of traffic (*res extra commercium*) are not fit to be object of pledge. The reason for this is the fact that the ownership of this thing can not be transferred from one person to another.

However, there is a dilemma whether the fruits of thing out of traffic may be object of contractual pledge. In this regard, we point out the professor N. Gavella's opinion, according to which regardless of the fact that the object is out of traffic, the fruit of this object may be object of contractual pledge after their separation³, which is a very rational solution.

With regard to the object in public use (as things out of traffic) it is prudent to point out that according to the Law on ownership and other

¹ Assistant at the Law Faculty “Iustinianus Primus” in Skopje.

² Art. 228, Law on ownership and other real rights: *“Pledge may be instated on one or more things. The things from paragraph 1 of this article must be in legal traffic; also article 10, paragraph 1, Law on contractual pledge: „The object of pledge must be owned by the pledge debtor, and it must be in legal traffic”*.

³ Gavella N., *Stvarno pravo, Svezak 2*, Narodne Novine, 2007, p. 180.

real rights these object may only be owned by the state (art. 16, paragraph 4). This exclusive right means that these objects can not be transferred to private ownership. Because the object can not be transferred, the conclusion is that pledge creditor will not be able to put them on sale and realize his/her right of contractual pledge.

In the legal system of Republic of Macedonia, as in many others, there are things out of traffic (*res extra commercium*) by law⁴ such as: agricultural land and forests in ownership of the state. With regard to it, article 17, paragraph 1 of the special Law on agricultural land from 2007 (Official Gazette of Republic of Macedonia, number 135/07), that regulates the legal regime of agricultural land, prescribes that: *Agricultural land owned by the state may not be object of sale*. The same is article 89, paragraph 1 of the Law on forests (Official Gazette of Republic of Macedonia, number 64/09): *Forests owned by the state may not be object of sale*.

Having in mind the quoted regulations, the conclusion is that agricultural land and forest may not be object of contractual pledge because the right of ownership of this things can not be transferred from one person to another.

3. We have to keep in mind that special laws prescribe that certain things may not be object of pledge, such as construction grounds owned by the state. The prohibition of pledging construction ground owned by the state is the article 42 of the Law on construction ground from 2009 (Official Gazette of Republic of Macedonia, number 130/09), where it is stated that only constructional ground in private ownership may be pledged. Having this in mind, we can conclude that construction grounds owned by the state are not object of pledge.

In this context it must be mentioned that the Law on protection of cultural heritage (Official Gazette of Republic of Macedonia, number 20/04) states that pledging protected cultural heritage is not permitted⁵.

1. MOVABLES AS OBJECT OF CONTRACTUAL PLEDGE

1. Having in mind the general legal provision concerning the object of pledge, we can conclude that object of pledge may be movable things that are in legal traffic. This means, *argumentum a contrario*, that object of contractual pledge may not be things that are out of legal traffic, because they have no monetary value. Things without monetary value are considered to be identification record, public act and other documentation.

2. With regard to movables in limited traffic such as weapons, according to the prevailing opinion of the civil doctrine, they may be object of contractual pledge. However, it must be considered that with regard to the realization of the right of pledge on these types of thing, besides the articles of the Law on contractual pledge, other legal provisions must be followed as well. Such provisions are special laws

⁴ For things outside the legal traffic see: Живковска Р., *Стварно право*, Европа 92, Скопје, 2005, p. 170-198.

⁵ „No one may buy, pledge or otherwise acquire, conceal or traffic protected cultural heritage, art. 50, paragraph 3.

that regulate the conditions that must be met in order that a person (natural or juridical person) may acquire right of ownership on things in limited legal traffic.

3. With regard to the description of the movables in the pledge contract, we can conclude that, because of the great number of different movables, there are no general legal provisions on how they should be described. It is common in the legal practice for the movables to be described in the pledge contract by their characteristic that provide individualization of the object of pledge. For example, cars are described by: brand, color, registration plates, engine number etc. If the object of pledge is a technical appliance it is described by putting the technical term of the object (for example Canon LBP 2000), its registration number, and other specific characteristics.

Object of contractual pledge are also the so-called quantities. The civil doctrine determines things of small value as quantities. Things such as beans, rice etc are considered to be quantities because the value of this thing as individual is very small and they can be used only like quantities and not as individual things⁶. The description of those things is realized by determination of their gender (type), quantity and quality.

With regard to the jurisdiction of the notary for notarization of the pledge contract, it is useful to point out that the jurisdiction in cases when object of the right of pledge is movable thing, is determined alternatively. In that regard, the Law on contractual pledge stipulates that jurisdiction of the notaries is determined by the place where the object of contractual pledge has been situated or the jurisdiction is determined by the domicile of the pledge debtor (art. 22-a, paragraph 3).

2. IMOVABLES AS AN OBJECT OF CONTRACTUAL PLEDGE

The legal system of the Republic of Macedonia considers the real-estate and other immovable things as an object of contractual mortgage.

Having in mind the general provisions of the law, we draw the conclusion that real-estate and other immovable things can be an object of the contractual mortgage if the object of mortgage meets the two conditions, as follows: the real-estate and other immovable things should be in a legal traffic and owned by the pledge debtor. Therefore, we point out once more that objects of contractual mortgage cannot be immovable things which are outside the legal traffic, as well as property of common use and agricultural land ownership of the state. Also, object of contractual mortgage are not immovable and a special law regulates it. Clearly, it stipulates that no mortgage can be raised, by analogy it can be concluded that no right of contractual mortgage may be established. This mainly applies to construction grounds owned by the state.

In raising the contractual mortgage on real-estate, it is important to underline the validity of the principle *superficies solo cedit*. According

⁶ See: Живковска Р., *Стварно право*...стр. 164; Исто и кај: Kovačević - Kuštrimović R., Lazić M., *Stvarno pravo*, Niš, 2004, p. 17.

to this principle, the land is treated as main property, whereas all that is permanently conjoined to it becomes its addition (ancillary property), thus following the fate of the land as main property. More specifically in terms of the mortgage, the validity of the superficies solo cedit principle implies that, upon raising mortgage on land as real property, the subject of mortgage are both the land and its additions (plantations upon agricultural land⁷, i.e. buildings erected upon construction ground⁸, as well as the set installation⁹). The legal regime according to which the land is the main property (stated in paragraph 1 of Article 10 of the Law on Construction Grounds), does not apply to those buildings erected on the basis of the right to a long-term lease of construction ground, the right to easement and concession, since these buildings do not follow the fate of that land, but they are rather an addition to the right (to a long-term lease, easement, concession)¹⁰.

In the legal system of the Republic of Macedonia there are also instances where an object of the right to a long-term lease can be only the building, but not the land upon which the building has been erected. This is possible when the building has been erected upon state-owned land where the right of use belongs to the building owner. In this case, during the validity of the right of use the building land is state-owned, while the building is privately owned by the bearer of the right of use. Therefore, the subject of the mortgage can only be the building, but not the state-owned building land, since these are two different forms of the right of use¹¹. In addition to this standpoint is the fact that pursuant to the legal provisions, as we have already mentioned, the subject of contractual mortgage can only be property owned by the pledge debtor.

Connected to this legal situation, when the subject of contractual mortgage can only be the building (which is privately owned), but not the construction ground (which is state-owned), within Macedonia's legal life there rose the dilemma of whether upon the performed privatization of the construction ground by the bearer of the right of use, i.e. the building owner, the mortgage also applies to the land. As the principle of speciality is valid, we maintain that even in the case of possible privatization (of the building land by the bearer of the right of use), the mortgage raised on the building can not (by law) be transferred to the land, too. This means that if upon the raising of the contractual

⁷ "Sown or bedded plants onto a land having rooted belong to the land owner, regardless of who's the seed or the bedding plant was, whereas the relation between the land owner and the seed owner shall be regulated by the rules of the obligatory right", art. 126, para. 1, Law on Ownership and Other Real Rights...

⁸ "Buildings erected onto the surface of a building land, above or below the surface intended to remain there permanently are part of that construction ground until they become separated...", art. 10, para. 1, Law on Construction Grounds...

⁹ "Immovable, pursuant to this law, is considered land (agricultural, building, forest and grazing land), and buildings, as well as installations erected upon or beneath them, which are permanently conjoined to them, unless otherwise stipulated by law." art. 13, para. 4, Law on Ownership and Other Real Rights...

¹⁰ "...unless a property right legally separates them from that land, authorizing the bearer of that right to erect a privately owned building on somebody else's land or unless through concession the bearer of the right is authorized to erect a privately owned building upon that land.

¹¹ Hence: Јаневски А., Живковска Р., *Експертско правно мислење за правниот статус на градежното земјиште на кое корисничко право има Македонија Табак – Скопје, а заложен доверител е АД „Комерцијална банка“*, Скопје, 2008. Also Станковић О., Орлић М., *Стварно право*, Номос, Београд, 2001, p. 271-272.

mortgage the land is privatized on behalf of the pledge debtor, and the mortgage has been realized, the person who in the process of mortgage realization acquires ownership right over the building, can not simultaneously be granted ownership right over the land upon which the building has been erected.

Speaking about the mortgage object, one should bear in mind that under the Law on Contractual Pledge real property also includes vessels and aircraft: *“For the right to mortgage on boats and other vessels and over aircraft accordingly applicable are the provisions of this law, unless otherwise stipulated by another law.”*(Art. 35)¹². This legal solution is in accordance with the Law on Property and Other Real Rights according to which movable property can be treated as real property, if stipulated by law¹³. Still, despite the inclusion of this provision within the Law, the latter does not regulate the establishment of contractual mortgage on vessels and aircraft. Aircraft and vessels are subject to special legal regime in the legal system of the Republic of Macedonia, i.e. they are regulated by special laws. Therefore, the legal regime for boats and other vessels has been regulated by the special Law on Internal Sailing (Official Gazette of RM, No. 55/07), while the legal regime regarding aircraft has been regulated by the 2006 Aviation Act (Official Gazette of RM, No. 14/06). In comparison with these special laws, more precise provisions on establishing contractual mortgage can be found in the Law on Internal Sailing, according to which the subject of the right to a contractual pledge on a vessel can be the vessel as a whole, along with its additions (Art. 119). The Aviation Act, unlike the Law on Internal Sailing does not encompass special regulations concerning the right to contractual mortgage on aircraft. This Law, however, stipulates that the right to a pledge on aircraft, as real property, is noted in the Macedonian Aircraft Registration (Art. 97).

At the end, regarding immovable as an object of contractual pledge, the question arises concerning the jurisdiction of the notary for notarization of the mortgage contract. This question has been regulated in detail in the Amendments and supplementations of the Law on contractual pledge. According to the Amendments of the law: *The pledge contract is notarized by the notary that has jurisdiction in the area where the immovable's are situated* (art.22-a)

3. IDEAL PARTS AS AN OBJECT, MORE THINGS TOGETHER AS AN OBJECT OF CONTRACTUAL PLEDGE AND FRUITS AS OBJECT OF CONTRACTUAL PLEDGE

As it was pointed out above, the object of contractual pledge in the legal system in Republic of Macedonia may be ideal part of things and more things together as object of contractual pledge. It is considered

¹² According to the Italian Civil Code (Codice Civile Italiano), apart from aircraft and vessels, subject to the mortgage right can also be cars (art. 2810). This means that in compliance to the provisions of the Italian Civil Code, upon establishing the right of a pledge even cars have the same status as real property.

¹³ *“Property which by nature is movable, in a legal sense can be regarded immovable, if it belongs to given real property or if the law equates it with immovable.”* (art. 13, para. 5).

that object of contractual pledge may also be fruits, after they have been separated.

a) Ideal parts of things as object of contractual pledge

The Law on Contractual Pledge allows the right to contractual pledge to be also based on the ideal share of things. When the property is in co-ownership, pursuant to the provisions of the Law on Contractual Pledge, subject of the right to a contractual pledge is also the ideal share of the property owned by the pledge debtor (Art. 11, para. 1). This possibility, given by the Law on Contractual Pledge, has its basis within the Law on Ownership and Other Real Rights, according to which the ideal share itself is independent in the value (Art. 14, para. 5) and as such it has a given property value, so it can be subject of the right to a contractual mortgage.

Concerning the establishment of contractual mortgage on an ideal share of the immovable, we would like to point out the potential problems they may arise during the realization procedure for that contractual pledge. Namely, during the realization of the contractual mortgage on an ideal share of the property, the Law on Contractual Pledge does not stipulate sale of the ideal share only (which is subject to the contractual pledge), but it also gives greater competences to the pledge creditor, i.e. they *“can ask for sale of the property as a whole, unless it is a physically inseparable property”* (Art. 11, para. 2), and we find this to be an improper arrangement. Having constitutionally guaranteed right to ownership (Art. 8 from the Constitution), we maintain that this means that realization of the right of pledge implies the violation of the ownership right for the remaining co-owners who have not pledged their ideal part of the co-ownership. The legal solution for this situation should include the realization of the contractual pledge only for the ideal share of the property which is in fact the subject of the contractual pledge, too. Provisions of Article 11, referring to the establishment of right of pledge over an ideal (co-owned) share of the property are unclear in many aspects and that creates much confusion in the legislation of the Republic of Macedonia, which was an issue on many meetings of notaries public. In this text, without going into greater analysis, we would like to underline that Article 11 itself should be reviewed, thus regulating the establishment of the right to a contractual pledge over an ideal property share.

Pursuant to the provisions of the Law on Contractual Pledge, object of the contractual pledge can also be things in joint ownership¹⁴. In the instances where object of contractual pledge are things in joint ownership, the Law on Contractual Pledge rightfully prescribes that the property can be an object of the right to a contractual pledge as a whole – but only when it is agreed upon by all joint owners (Art. 11, para. 3). If the pledge debtor does not provide approval from the remaining owners, then, pursuant to the Law, the right to a contractual pledge is based on

¹⁴ The institute of joint ownership has been defined by the Law on Ownership and Other Real Property Rights. Pursuant to the provisions of Article 59 of the Law: *“joint ownership is the ownership on undivided property by several persons when their shares are determinable, but have not been pre-determined”*.

“the share of the condominium ownership that is in his/her possession”¹⁵.

The formulation of the legal provision raises dilemmas on the means of establishing the right to a pledge over the share in the joint ownership belonging to the pledge creditor, when the shares of the owners in the joint ownership are determinable, but have not been pre-determined!?

b) Several things together as an object of contractual pledge

Subjects of the right to a contractual pledge can be several objects together¹⁶. When objects of the right to a contractual pledge (mortgage) are several objects, the civil doctrine speaks about the so called “*simultaneous (mutual) mortgage*” which means that all objects as a whole secure the claim of the pledge creditor¹⁷. In the existence of a simultaneous mortgage, the pledge creditor is in a rather favorable situation, since he can chose from which real property (the subject of the simultaneous mortgage) they will settle the claim, so, they can seek mortgage realization on several objects which they find sufficient for claim settlement. In terms of the simultaneous mortgage, we would like to underline that the Law on Contractual Pledge does not envisage specific provisions regulating this institute, and therefore legal life involves the practice of applying provisions of the Law concerning contractual mortgage.

c) Fruits as object of contractual pledge

The law on ownership and other real rights, as general law in the area of property relations, prescribes that fruits may be object of the right of contractual pledge. With regard to this, the law on ownership and other real rights prescribes that: The right of pledge involved the whole object, part of the object, the fruits, until they have been separated, and all of the parts that the object is consisted of. (art. 230, paragraph 1). However, the Law on ownership and other real rights does not regulate the question of the legal destiny of the fruits after their separation. These unresolved questions concern the issue whether there is a difference in the legal regime of fruits dependently of the fact how the right of pledge has been instated (difference between the pledge instated by delivering the

¹⁵ We would like to point out that the possibility of having jointly owned real property as a mortgage subject is also present in comparative law. Hence the Italian Civil Code (Codice Civile Italiano) prescribes that the mortgage can be established on jointly owned property and on the property share going to the pledge debtor upon the division (Art. 2825).

¹⁶ In comparative law too, there are legal regulations stipulating the establishing of a pledge right over more objects altogether such as: the Slovenian Stvarnopravni zakonik, *Uradni list RS*, št. 87/2002 (čl. 147, st. 1); the Serbian Zakon o založnom pravu na pokretnim stvarima upisanim u registar, (čl. 9, st. 2) and Zakon o hipoteci (čl.4, st. 1); the French Civil Code (Code Civil) (art. 2333); the Italian Civil Code (Codice Civile Italiano)(art. 2856), etc.

¹⁷ Hence: N. Gavella, *Stvarno pravo*, Svezak drugi, p. 310; Also O. Станковић М. Орлић, *Стварно право*, quoted textbook, p. 272-273; Како и R. Kovačević Kuštrimović, M. Lazić, *Stvarno pravo*, p. 333; Also T. Josipović, *Založno pravo na nekretnini*, *Zaštita vjerovnika – stvarnopravno, obveznopravno i ovršnopravno osiguranje* tražbina, Narodne Novine, Zagreb, 2005, p. 150.

object in hands of the pledge creditor, or by inscription of the pledge in public records such as the Pledge Registry (for pledge over movables) or the Cadastre of real-estate (for pledge over immovable).

The analysis of the articles of the Law on contractual pledge with regard to the fruits and the possibility of the fruits to be object of pledge brings us to the conclusion that unlike the Law on ownership and other real rights, the Law on contractual pledge, as special law, contains only one provision. This law regulates the legal destiny of the fruits after their separation. More exactly, the Law regulates what happens after the separation of the fruits. In that sense, the Article 27, paragraph 2 of the Law on contractual pledge prescribes that: *If the object of pledge has fruits, after their separation these fruits belong to the pledge debtor, if something different has not been determined by the contract parties in the pledge contract.*“. This article of the Law clearly states that after their separation the fruits are no longer object of the pledge and therefore the pledge debtor is able to collect them. From this article, it clearly arises that the pledge creditor is permitted to collect the fruits freely when the contractual pledge has been instated by its inscription in the Pledge registry (for movables) or in the Cadastre of real-estate (for immovable). However, the quoted article does not regulate the situation when the pledge is instated by delivering the movable object of pledge in hands of the pledge creditor. However, in this case we can conclude that the pledge creditor may not be permitted to collect the fruits on his personal behalf, if that was not expressed in the pledge contract. This is because the general provisions of the Law on ownership and other real rights stipulate that the fruits belong to the owner of the object from which they have been collected (that owner in this case is the pledge debtor). As to the legal destiny of the fruits after the separation, it is undisputed by the civil doctrine that they are independent, and as such they may be object of ownership and other real rights independently of the thing from which they have been collected. This leads us to the conclusion that fruits may be object of contractual pledge separately from the thing from which they have been collected, but only after their separation.

This question of fruits as object of contractual pledge has been present not only in the legislative, but also in the civil doctrine. Regarding this question the civil doctrine remains on the stance that while fruits are not separated from the thing that they arise from, they must be an object of pledge along with that thing. This stance has been expressed by two announced theoreticians, the professor R. Kovačević – Kuštrimović, and the professor M.Lazić. However, they approach the problem from many aspects. In this sense, they point out that it is not excluded for fruits to be an object of contractual pledge independently from the thing that they have arisen, but only after their separation. The esteemed professors also point out that in case when the fruits are independent object of ownership (after their separation), it is obvious that they must meet the general condition under which a thing may be an object of contractual pledge. Also, conditions regarding the manner of instatement of contractual pledge must be met. This means that in order for the right of pledge to be instated, we must have legal basis for instatement (*iustus titulus*), and also legal manner for instatement of the contractual pledge – by delivering the object of pledge in hands of the

pledge creditor, or by inscription of the right of pledge in public records such as Pledge registry (for movables) and the Cadastre of real-estate (for immovable's) (modus aquirendi)¹⁸.

4. FUTURE THINGS AS OBJECT OF CONTRACTUAL PLEDGE

Object of contractual pledge, according to the articles of the Law on contractual pledge may also be future things¹⁹. In that case, The Law on contractual pledge contains only vague directive that implement the possibility of instating contractual pledge on future thing. However, the Law does not regulate the matter further that that. Therefore, there is a legal void concerning the manner and conditions under which the contractual pledge over future things could be instated. This legal void has been the principal reason for the problems of instatement and realization of the right on contractual pledge in the legal system of Republic of Macedonia.

The determination of the future thing (what it is, how it is represented) is very important with regard to the instatement of contractual pledge. In that regard, we would like to point out that the concept of future things as objects of ownership and other real rights has not been recognized. This is because the Law on ownership and other real rights does not regulate the institute "future things"; it only regulates the institute "things". According to the article 12, paragraph 2 from Law on ownership and other real right: *A thing is part of the material world, which can be under the authority of men and it may be individualized.* This legal definition on what things as object of ownership and other real rights are, underlines the basic fact that object of ownership and other real right are only things that exist in the present (not things that may be created in the future) and can be individualized. Therefore, this definition can not be applied to future things as objects of contractual pledge, as, obviously, future things are not part of the material world, they can not be put under authority of men and it is very difficult to be individualized.

It can not be disputed that instating contractual pledge over future things arises a lot of questions that have not been answered, or regulated by the Law on contractual pledge. However, putting aside the lack of regulations, it is obvious that when object of contractual pledge are future things, the right of pledge may only be instated by registration of the pledge in public records. It is logical that, if the object of pledge does not exist in the material world, it can be delivered in hand of the pledge creditor, as one of the legal manners of instating the right of contractual pledge over immovables. Having all this in mind, we can safely conclude that contractual pledge over future things is only instated by inscription of the pledge in public records. In that sense, the contractual pledge over future movables should be inscribed in the Pledge registry and the contractual pledge over future immovables should be inscribed in the Cadastre of real-estate.

¹⁸ See: *Stvarno pravo...*, стр.279-280.

¹⁹ „Pledge may be instated over future objects, art. 5, The Law for Contractual Pledge...

Concerning the inscription of future movables, we need to point out that the Law on contractual pledge does not regulate the manner of inscription of contractual pledge over future movables, so the question how this right may be inscribed in the legal practice remains opened.

The articles of the Law on contractual pledge that regulate the manner and inscription of contractual pledge over movables do not mention the manner and condition of inscription of future things, so it is very difficult to presume how this right may be inscribed.

Unlike the Law on Contractual pledge, the Law on cadastre of real-estate from 2008 (Official Gazette of Republic of Macedonia, number 40/08) prescribes how right on future things may be inscribed in the cadastre of real-estate. This law prescribes that future objects may be registered in the sheet on pre-notation of buildings. In the sheet on pre-notation of buildings, according to the Law on cadastre of real estate the right of ownership of buildings or part of buildings while they are in the phase of construction is pre-noted²⁰. On this sheet, contractual mortgage over future immovable can also be pre-noted. The pre-notation of contractual mortgage over building or part of building while they are under construction, according to the Law on cadastre of real-estate, consists of notation of contractual mortgage over future (pre-noted) right of ownership on future objects²¹.

Other crucial question regarding the future things as an objects of the right of contractual pledge is the manner of inscription of the future thing that also need to be individualized in order for the pledge to be instated.

So the unavoidable question is: How will the future thing be described in the pledge contract?

If the future thing is meant to be movable, it may be described by stating the characteristic of the future movable that it will have upon its creation.

In case when the future immovable thing is meant to be immovable, then the immovable will be described in the mortgage contract by the characteristic determined in the basic construction project²².

Regardless of the fact that in the legal system of Republic of Macedonia it is possible to instate contractual pledge over future things, the concept of pledging future things opens dilemmas in the civil doctrine. Mostly the representatives of the civil doctrine such as Professor Z.P. Rašović, Professor R. Kovačević – Kuštrimović, profess M. Lazić and others, consider that future things can not be objects of

²⁰ See: art. 133, Law on Cadastre of Real-Estate...

²¹ *In the cadastre of real-estate, the right of ownership of building, and separate part of the building under construction are pre-noted by filing up date for persons who have the right to build according to the building permit and date for the building and particular parts of the building based on the basic project notarized by the authorized notary*, art. 133, paragraph 2, Law on Cadastre of Real-Estate...

²² *The basic project is consisted of separate project that deliver technical solution of the building, the location of the building and the completion of basic condition for construction*, art. 47, Law on Construction Grounds, Official Gazette of Republic of Macedonia, number 130/09.

contractual pledge, same as future things can not be object of ownership and other real rights²³.

Professor Z.P. Rašovać states that instating contractual pledge over future things is practically impossible, because the pledge as real right may be instated over certain object that is a part of the material world (regardless of the fact how probable is that the object will be created) Professor Z.P. Rašović considers that in case when pledge contract determines instatement pledge over future thing, it must be stipulated in the contract that the right of pledge will be instated in the moment when the future thing will become part of the material world, meaning that it will be created²⁴.

It can not be disputed that the opinion of the civil doctrine is well argued. However, the fact remains that in the legal system of countries in transition such as Republic of Macedonia, there is an economic necessity for the future things to be object of contractual pledge. In order for this intention of the legislature to be put in effect, certain amendments of the Law on contractual pledge must be made. Primarily, amendment must be made in order to determinate the condition and manner of instatement of contractual pledge over future things.

²³ See: *Stvarno pravo, цит. учебник*, p.279.

²⁴ See: Rašović Z.P., *Stvarno pravo*, Podgorica, 2008, p. 386-387.

Summary

1. Object of contractual pledge in the legal system of Republic of Macedonia may be movable and immovable things. In these cases, the contractual pledge may be instated on the entire object, more object together and on ideal part of the object. When the object of contractual pledge is an immovable thing we have mortgage as a form of contractual pledge.

2. In order for a certain thing to become an object of contractual pledge, two conditions must be met. The first condition is that the object must be owned by the pledge debtor and the second condition is that the object should be in legal traffic.

- Exception to the rule that the object of contractual pledge must be owned by the pledge debtor is prescribed by the Law on contractual pledge, as there is a possibility for the pledge creditor to instate pledge on the object of his right of pledge (sub-pledge).

- The second condition – the object of contractual pledge must be in legal traffic, is also justified as things that are outside the traffic (*res extra commercium*) are not fit to be object of pledge, because they can not be transferred from one person to another.

3. Movable things may be object of pledge, if they are in legal traffic and have monetary value.

- Thing without monetary value such as identification record, public act and other documentation can not be pledged.

- Movables in limited traffic, such as weapons may be object of contractual pledge

4. Object of contractual mortgage are immovable things which are in legal traffic.

- Immovable outside the legal traffic, property of common use and agricultural land ownership of the state can not be pledged.

- Object of contractual mortgage is not immovable for which a special law exists and clearly stipulates that no mortgage can be raised, or, by analogy it can be concluded that no right of contractual mortgage may be established (construction grounds owned by the state)

- In raising the contractual mortgage on real-estate, the principle *superficies solo cedit* is applied.

Mortgage object under the Law on Contractual Pledge real property also includes vessels and aircraft.

5. When the property is in co-ownership, pursuant to the provisions of the Law on Contractual Pledge, subject of the right to a contractual pledge is an ideal share of the property owned by the pledge debtor.

6. In the instances where object of contractual pledge are things in joint ownership, the Law on Contractual Pledge prescribes that the property can be an object of the right to a contractual pledge as a whole – but only when agreed upon by all joint owners. If the pledge debtor does

not provide approval from the remaining owners, then pursuant to the Law, the right to a contractual pledge is based on the share of the condominium ownership that is in his/her possession.

7. Subjects of the right to a contractual pledge can be several objects together.

The right to a contractual pledge (mortgage) over several objects, is called simultaneous (mutual) mortgage.

8. The Law on ownership and other real rights, as general law in the area of property relations, prescribes that fruits may be an object of the right of contractual pledge.

9. Object of contractual pledge, according to the articles of the Law on contractual pledge may also be future things.

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