Possession as an institute of the Civil Law

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Abstract- Even though from a legal point of view, subjective real rights are a form of possession (possession) of the thing, recognized by the objective real law, theoretically, a distinction is made between the terms subjective real right, possession and holder. The difference is that the holders of subjective real rights (property and other real rights) exercise legal power by exercising the powers that make up its content (possession, use, disposal). If the holder of the subjective real right performs these attributes, it means that they also have the de facto power of the thing, ie the possession. In the RNM, the institute of Possession is stipulated in the Law on Property and other real rights, which also stipulates the acquisition, protection and termination of the possession. In this paper, various aspects of the possession were elaborated, such as the notion, types of possession, protection, acquisition of the possession etc

Through the research, the historical importance of the possession and the position of possession in the modern legal orders, I came to a conclusion that Possession is one of the central institutions of the Civil Law, especially in the countries where the Pandekt law is accepted.

Keywords: possession, de facto power, legal power, subjective real rights, ownership, holder, simple holder (detentor) etc.

1. Notion of possession

From a formal legal point of view, subjective real rights are a form of possession (possession) of the thing, recognized by the objective real law.

Unlike property and other real rights (servitude, pledge, real burden, right of construction, etc.) which give their holders legal power over things, possession signifies de facto power over the thing, which should coincide with the legal one because it originates from her. It follows that "the de facto power over the thing or possession is the exercise of the legal power of some subjective real right."[1]

The Law on Property and other real rights of RNM, in Article 167 paragraph 1 states: "Possession over a certain thing has every person, who directly or through the mediation of a proxy, exercises actual power over the thing (direct possession).".

In theory, a distinction is made between the terms subjective real right, possession and holder. The difference is that the holders of subjective real rights (property and other real rights) exercise legal power by exercising the powers that make up its content (possession, use, disposal). If the holder of the subjective real right performs these attributes, it means that they also have the de facto power of the thing, ie the possession. In this case the owner of the thing is also the owner of the thing, which in theory is known as jus possidendi.

In cases when a person is the possessor, ie has the de facto power over the thing, and does not have (ie pretends to have) the legal power of the thing, then that person is only the holder of the de facto power over the thing, behind whom hides another holder of the subjective real right. This case in theory is called jus possessionis.

In real law theory, apart from the holder of the subjective real right and the possessor, who have de facto power over things, there

[1] Prof.Dr. Rodna Zivkovska “Stvarno Pravo” Book 1, Skopje, 2005, cit.book, pg.20.

are also simple holders (detentors or holders of things). These are persons who do not have legal authority over things, and they hold the thing on behalf of another person, based on a legal situation in which another person is the holder of the subjective real right.

In practice, there can be a coincidence of the holder of the subjective real right and the possessor in a same person (the possessor is also the owner of the thing, ie the holder of another subjective right), which is not the case when it comes to a simple holder, which cannot lead to a coincidence of the simple holder and the holder of the subjective real right in one person, ie they are always two different persons (owner and housekeeper, employer and employee, etc.)

2. Elements of possession

The emergence of possession as a legal category dates back to Roman law, in order to protect the simple de facto authority over things or the so-called corpus (corpus possesionis). The roman law intended to give protection to this authority, with special lawsuits - interdicti - which were in fact orders issued by magistrates so as not to disturb the ruler and return the item immediately in possession until a final decision on property rights was made.

In the classical and postclassical epoch, the protection of possession was extended, and in addition to the objective element (protection of the de facto power of the thing or corpus), the subjective (psychological-intellectual element) was added - animus domini which meant the possessor to treat the thing as owner. After this, the quasi-possessio is introduced as a possession over a right, which in content coincides with some other subjective right (except property).

Modern legal orders have different approaches to the constituent elements of possession. All views start from the understanding that "in order for the de facto power over the things to be legally relevant, several conditionsneed to be met[2]", and they are:

А) ***The material element***- existence of actual power of the item or the so-called Corpus and

Б) ***The psychological element*** **-** the will to keep the thing as its own, ie the possessor to behave as the owner (to have animus rem sibi habendi).[3]

The material element means "undertaking material actions over the thing (possession, use, etc.) .. which constitute the content of the property right". It follows that the corpus is actually acquired through the material appropriation of things.

However, the civilists believe that the de facto power should not be considered too narrow and literal, ie that there should be no physical separation of the thing from the possessor. Rather, it should be considered that that fictitious power exists when there is a real possibility of actually disposing of the thing.

The psychological element or animus signifies the power to keep things as one's own, ie the possessor to treat things as the owner.

From the above it can be concluded that the legal orders based on the view that the existence of possession requires only de facto power over the thing (Corpus), are

[2] R.Kovacevic Kustrimovic, M.Lazic, Stvarno Pravo, Nis 2004, cit.book, pg.35.
[3] Prof.Dr. Rodna Zivkovska “Stvarno Pravo” Book 1, Skopje, 2005, cit.book, pg.225.

based on an objective or modern conception of possession, while the legal orders based on the view that for the existence of possession, in addition to the de facto power over the thing (corpus), it is necessary to have the will to hold the thing (animus), are based on the subjective (classical) conception of possession.

3. Concepts of possession

In legal theory, two conceptions of possession are known, and they are: *the classical conception* (subjective) and *the modern conception* (objective) of possession.

The classical or subjective conception originated in Roman law, and also believed that in order to speak of possession, in addition to de facto power (corpus possessioniss) it is necessary to have the will of the possessor to act as the owner of the thing (animus domini). However, the German lawyer Savigny considered that it is not enough just the intention of the possessor to be the owner, but it is necessary to act as the owner (animus rem sibi habendi). He believed that not all persons exercising the de facto power over the thing, at the expense of another person, have animus domini.

This theory is called subjective because the intention occupies a central place in this conception of possession.

Unlike the classical, the modern (objective) or pandekt conception of possession, presented through Yering's teachings, believes that only the material element is sufficient to speak of possession, ie the existence of de facto power over the thing, and not the will. This concept is widely accepted in the countries based on Pandekt law (Croatia, Slovenia, R. North Macedonia, etc.)

4. Legal regime of possession in RNM

The legal regime of possession in the Republic of North Macedonia is regulated by Articles 167-191 of the Law on Property and Other Real Rights.

Paragraphs 1 and 2 of Article 167 regulate the direct and indirect possession, whereby the same paragraphs state: “Possession over a thing has every person who exercises the de facto power over the thing directly or indirectly, through another person to whom, on the basis of usufruct, on the basis of a pledge agreement, lease agreement, service contract or some other legal act, he has given the thing in direct possession (indirect possession). "

From the above we can see the fact that the legal system of the Republic of North Macedonia in terms of the essence of possession is based on the objective conception of possession. However, the scientific determination of possession, ie the authors believe that the de facto power over the thing must contain a minimum of will to use the thing in its own interest. Proof of this is the Law on Property, which does not consider a simple holder (detenter) who only exercises de facto power in someone else's name, on the basis of employment or similar relationship, as a possessor.

The Law on Property, in addition to the definition of possession, also regulates who can be subjects of possession, what is the object of possession, what are the functions of possession, types of possession, acquisition and termination of possession and protection of possession.

According to the Law on Property, natural and legal persons, as well as several natural and legal persons (co-owners or joint rulers) can appear as subjects of

possession. However, the provisions of this law do not specify in detail how, ie through whom legal entities will exercise actual power.

It is important to note that the Law on Property in Art. 169 and Art. 170 stipulates that the object of possession are the things, the parts of things, the main and secondary things, the sum of things, ie the collective things and the rights.

When the object of possession is a thing, it is necessary that the thing be a thing in a real legal sense, ie "it can be an object of real rights". According to Article 170 of the Law on Property, the possession of a right is equal to the possession over a thing, ie the same legal regulations apply to it as for the thing.

5. Types of possession

The Law on Property lists the following types of possession: 1. Direct and indirect possession, 2. Original and derived possession, 3. Possession of a thing, 4. Possession of a right, 5. Individual possession, co-possession and joint possession, 6. Lawful and unlawful possession, 7. True (rightfully peaceful) possession and untrue (defective, vicious) possession, 8. Conscientious and unconscionable possession and 9. The possession of the heirs.

1.Direct and Indirect possession

This division is based on the spatial relationship between the possessor and the thing, with direct possession existing in cases where there is a direct relationship between the possessor and the thing. According to the Law on Property and other Real Rights (Art. 167, paragraph 1) "Possession of a certain thing has every person who, directly or through a proxy, exercises de facto power over the thing" (eg: the owner of an apartment living in it, the tenant who is located in the apartment, etc.). Indirect possession is a case when some persons exercise the de facto power of the thing through other persons (on the basis of a legal act: contract for pledge, lease, etc.) (Article 167, paragraph 2 of LPRR). Such cases are: the pledgor, the lessor, etc., who do not have a direct relationship with the thing, but the power over it is indirect, through the economic interest: interest, rent, etc., which they receive from the indirect possessors (the pledgee, the lessee, etc.)

2. Original and derived possession

This division is based on the origin of the possession. Pursuant to Article 173 of the Law on Property and other real rights, "Possession is acquired when the acquirer has established de facto power over the item, regardless of whether it was established by a unilateral act (original acquisition of possession-original) or it was transferred to him by a legal act (acquired acquisition of possession-derivative). The original possession does not depend on the will of the previous owner, ie it is acquired by establishing de facto power (by a unilateral act) of the thing, while the performed possession is acquired by a declaration of will (agreement) from the previous possessor (eg the tenant based of a legal act derives its direct possession from the possession of the owner, etc.)

3. Possession of a thing

Possession of a thing is when the object of possession is a thing, its constituent parts - incorporated and not incorporated in that thing, a certain part of a thing, a secondary thing on which there is de facto power or a

thing separated from the community of thing on which there is de facto power.[4]

Possession of a thing is also called ownership possession because the possessor exercises the de facto power of the thing which corresponds intensively to the right of ownership (full power over the thing consisting of the powers of possession, use and disposal).

4. Possession of a right

This type of possession is also called quasi possessio, because it "allows the possessor to exercise power which is less intense in intensity than the power of the holder of possession of the thing (ownership possession)".[5]

In the legal order of RNM, according to Article 176 of the Law on Property and other real rights, possession of a right exists when the object of the possession is the performance of the real servitude in relation to that real estate (which is the object of the right of servitude).

5. Individual possession, co-possession and joint possession

Depending on whether the possessor's side is simple or complex, possession can be individual or plural (co-possession and joint possession).

Individual possession is when the de facto power of the thing (or part of the thing), or the right is exercised by a natural person or legal entity. (according to Article 171 of ZSIDSP). When the actual power of the thing or right is exercised by several persons simultaneously and alternately, then it is a matter of co-possession.

6. Lawful and unlawful possession

Article 179 of the Law on Property and other real rights states that "Possession is lawful if the possessor has a valid legal basis for possession." As a valid legal basis for acquiring possession of a thing are considered the same grounds that are required for acquiring the right of ownership, primarily legal matters (contracts), decisions of state bodies and some other legal facts (or a set of facts) that must arise in order to gain possession. Science believes that in addition to the legal basis, in order to gain possession, it is necessary to have a transmission or tradition (modus adquirendi), ie a way to gain de facto power over the thing.

The Law on Property and other real rights does not define unlawful possession, but the legal theory considers possession as such, for which there is no valid legal basis for its acquisition.

This division of lawful and unlawful possession is important for maintenance as a legal way of acquiring property rights, but not for possession protection.

7. True (rightfully peaceful) possession and untrue (defective, vicious) possession

This division is based on the manner of transmission (tradition) of the thing. When there is a legal tradition (modus adquirendi) of possession over the thing or the right, then it is a matter of true (rightfully peaceful) possession (Article 179, paragraph 2 of the Law on Property and other real rights). [6] In contrast, possession obtained by force, deception, or abuse is untrue (defective, vicious) possession.

Article 179 of the Law on Property and other real rights stipulates that there may be a transformation from untrue (defective,

[4] Prof. D-r. Rodna Zivkovska „Stvarno Pravo “ Book 1, Skopje 2005,cit.book, pg.237
[5] R.Kovacevic Kustrimovic, M.Lazic, Stvarno Pravo, Nis 2004, cit.book, pg.44.

[6] “True or peaceful possession is that which has not been obtained by force, fraud or abuse of trust" Art. 179, paragraph 2 LPRR.

vicious) to peaceful (true) possession with the expiration of the period in which the person from whom the possession has been taken has the right to seek protection.

8. Conscientious and unconscionable possession

According to Article 174, paragraph 3 of Law on Property and other real rights "possession is conscientious if the possessor does not know or can not know that there is no legal basis to exercise de facto power over things." This possession is also called bona fidei possessor, ie possession in good faith.

In this division, conscientiousness is the subjective attitude of the possessor towards the legal basis or the rules of subjective law. "Conscience of possession is presumed" (Article 179 of Law on Property and other real rights) but in case of dispute it must be proved.

There is no definition of negligent possession (malae fidei possessio) in the Law on Property and other real rights, but legal theory considers that possession is unconscionable when the possessor knows or has sufficient reasons to assume that the right of possession does not belong to him. (eg the thief knows that there is no legal basis to possess the stolen thing). Unlike lawful and unlawful possession, which are objective categories, conscientiousness and negligence are subjective categories.

It should be emphasized that the terms "conscientious possession" and "lawful possession" are not the same, on the one hand there may be lawful and unconscionably possession (buying a stolen thing with the knowledge that it is bought by a thief), on the other hand, there can be a conscientious and unlawful possession (eg receipt of things for safekeeping when there is a misconception that we hold it as owners-gift recipient). In cases when the possession is both conscientious and unlawful, it is a so-called qualified possession that can cause certain legal consequences.[7]

9. The possession of the heirs

Macedonian law, as well as modern comparative real law, believes that in order to protect the heirs, as well as in order for the property not to be left without a holder, the right of ownership of a thing is acquired by inheritance at the time of the delation, ie. the opening of the inheritance of the property of the deceased, ie the death of the testator (Article 153, Law on Property and other real rights)

There is a legal fiction in law according to which the act of the testator's death considers that the possession of things and rights passes from the testator to the heirs (so-called spiritualization) as they are at the moment of his death, although the heir does not have the de facto power over them. This enables possession protection of the heir (of the property that is left without a legally declared heir).

In cases where there are several heirs, the Law on Property and other real rights stipulates that the possession passes to all, ie they become co-possessors (co-heirs) of each of those individual possessions. Pursuant to Article 178, Law on Property and other real rights, the will of the testator, or the testamentary court may decide to entrust the execution of the possession to the heirs or another person.

6.Acquisition and termination of possession

Starting from the fact that the Macedonian legal order in the conceptual definition of possession starts from the objective conception of possession, it is considered

[7] Dr.Zoran P.Rasovic, Stvarno Pravo, Drugo Izdanje, Beograd 2005, cit.book, pg.55

that it is acquired by establishing de facto power over the thing.

The de facto power or the corpus of the thing can be established by a unilateral act, ie regardless of the will of the previous possessor (original acquisition, art. 173, paragraph 2 Law on Property and other real rights) or by a legal act, ie a derived possession, which is acquired by its transmission. In this case, the transfer is considered to have taken place at the moment when the acquirer, with the will of the transferor, finds himself in a position to exercise power over a certain thing.

When it comes to establishing de facto power over a movable item, the transmission can be: 1. physical (with actual transmission), 2. Symbolic and 3. Fictitious.

Physical transmission of the thing means direct and complete enabling of the acquirer to obtain possession of the thing, thus realizing the content of his right. The symbolic transmission exists in the case when the item is not transmissed as a whole, but only a part that symbolizes the whole is handed over. A fictitious transmission is a type of transmission in which no handing over is performed, but it is considered that the transmission has been performed, ie the possession (de facto power) has been transferred. The same can be done in three ways: **cessio vindicationis** - when the thing is in the hands of a third party (Art. 145, paragraph 5 of the Law on Property and other real rights), where it is considered that the handover has taken place, and then the third person is obliged to hand over the thing to the acquirer in possession, **cessio brevi manu**- when the thing under another basis is in the possession of the acquirer, and **traditio longa manu**- when the thing remains with the transferor. (Art. 145, paragraph 4 Law on Property and other real rights).

When it comes to establishing de facto power over an immovable thing, transmission can be both symbolic and fictitious.

In addition to the acquisition, ie the establishment of the de facto power of the thing, the Law on Property also provides for the termination of possession. Law on Property and other real rights in the exercise of possession prescribes the principle of permanence, which means that the possession lasts as long as the de facto power lasts, ie as long as the apprehending actions of the possessor in relation to the thing are performed.[8]

Article 180 paragraph 1 of the Law on Property and other real rights stipulates that the possession does not cease or is terminated if the de facto power is obstructed or temporarily terminated. This means that although the law stipulates that possession is lost with the loss of de facto power, it does not mean that possession ceases if the possessor, regardless of his will, is spatially and for a certain time period in a distance from the thing and does not perform the apprehending actions that make up the de facto power over that thing. This relies on the legal presumption of possession by the person who once acquired it: "Olim possessor, hodie possessor presumitur" (once a possessor, always ruler). Whoever claims the opposite must prove it.[9]

Science qualifies the termination of possession in two categories, as *absolute* and *relative* termination of possession. Absolute termination of possession occurs

[8] Prof.D-r.Rodna Zivkovska „Stvarno Pravo“ Book 1,Skopje 2005, cit.book, pg.248,
[9] R.Kovacevic Kustrimovic, M.Lazic, Stvarno Pravo, Nis 2004, cit.book, pg.52.

with the collapse of the thing when it is already absolutely impossible to exercise de facto power over it (Article 190, paragraph 1, Law on Property and other real rights). A relative termination of possession occurs when, at the same time, there is a new possessor in place of the former possessor. This happens in the case when the possession is transferred (the thing is handed over) or the possession is taken away by force, fraud or abuse of trust, and no protection is requested (Article 190, paragraphs 2 and 3, Law on Property and other real rights).

On the other hand, the possession of rights terminates in several ways: by the possessor losing or relinquishing the possession of his right (Article 191, paragraph 1, Law on Property and other real rights), when it comes to rights on immovable things, if he stops doing what he has done so far, that is, stop missing what he has missed so far and when his possession of the privileged thing ends (if he alienates the immovable thing, etc.)

7.Protection and functions of possession

The protection of possession as the de facto power of things has its roots in Roman law. In the beginning, the Romans exercised this protection with special lawsuits, the so-called interdicti (lawsuit in case of disturbance of possession (interdictum possessionis) and lawsuit in case of confiscation of things (interdictum recuperandae possessionis).

Since the de facto power of things is legally recognized, as a consequence there comes the possibility of protecting that power of things. Through protection, possession acquires the character of a legal category, although it is not a subjective right but only a de facto power.

Regarding the basis (reason) for protection of possession in the civil doctrine, there are several concepts that are grouped into three groups:

1. *Protection of possession due to self-infringement of order and peace in society* - starts from the legal nature of possession which according to Savigni is an expression of the real will of the possessor, regardless of whether that will is subjective real right or not. The basis of this theory is that no one has the right to arbitrarily disturb the possession or take away things on which there is a will of the ruler that is actually manifested.

2.*Protection of possession due to the special effective lawsuits that protect the possession behind which is usually the right of ownership* (Yering) - means that this protection protects property without which ownership would be an incomplete institute in the world, and

3. *Protection due to the economic effects of possession* - believes that the ruler who rules the things and the law is economically useful, while the owner who was almost absent or negligent is justified to lose the right of ownership, and the ruler to become the owner of the thing by maintenance.

In the Republic of North Macedonia, the basis of protection of possession is in ensuring order and peace, which gives more weight to this theory on the basis of protection of possession.

The Law on Property and other real rights of the Republic of North Macedonia has a built system of protection of possession, more precisely in Articles 181-189 and Articles 411-416. In the legal system of RNM, every possession is protected, even the possession acquired by force, fraud or abuse of trust, which is protected against all third parties, except from the person

from whom the possession was obtained, which with the expiration of the protection period can also be protected from the person by whom it was acquired, because it becomes a peaceful possession (ie it gives him the right to protect it as well).

The Law on Property and other real rights also speaks about protection from unauthorized obstruction or revocation of possession (Article 182, paragraph 1) but does not provide a clear definition of the terms unfounded, obstruction and confiscation.

Legal science considers that the term unauthorized means obstruction or revocation of possession to be performed without the consent of the possessor, ie without authorization that is legally based, a decision of a court or other competent authority. By the term revocation of possession, science means the total termination of the de facto power of the previous possessor and the establishment of de facto power by the occupier. The term obstruction of possession refers to actions and behaviors by which the de facto power of the possessor is limited, disturbed and challenged, and that obstruction can be achieved through some actions: doing, not doing, physical and verbal obstruction.

According to the Law on Property and other real rights, the protection of the possession is realized with special-possession lawsuits which are qualitatively different from the possessor (ownership) lawsuits.

In theory, there are two basic types of possession lawsuits - one is in a situation where possession is obstructed and the other is when possession is revoked, ie the possessor is deprived of possession. As an exception, there is also the possibility that the possessor will arbitrarily protect his possession, which is called *permissible self-help*.

According to the Law on Property and other real rights, the right to protection of possession is exercised in a special court procedure, which begins with a lawsuit. The lawsuit is acted upon by a competent court. Authorized to file a lawsuit are the possessor of the thing, ie the possessor of the right of real servitude, ie the person who was the last peaceful possessor until the moment of obstruction or revocation, while the defendant is always the person who committed the obstruction or revocation of the possession. The Law also stipulates a deadline within which the lawsuit for obstruction or revocation of possession can be submitted, which is 30 days from the day of finding out about the obstruction or revocation of possession and the perpetrator (subjective deadline), and no later than one year from eventual obstruction or forfeiture (objective deadline).

With the lawsuit submitted to the competent court, the possessor whose possession has been unauthorizedly obstructed or revoked is authorized to ask the court to determine: the act of obstruction or revocation, to order the establishment of a state of possession as it was at the time of obstruction or revocation and to prohibit such or similar obstruction or revocation in the future.

As for the allowed self-help or the so-called self-protection, it is envisaged by the modern legal orders as an exception, in the cases when the protection from the state (judicial) bodies in certain cases may be delayed (ineffective).

According to our legislation, self-help is allowed against a person who unauthorizedly obstructs or revokes possession if the following conditions are

cumulatively met: self-help is necessary, the danger of obstruction or revocation of possession is immediate (direct) and the application of one's own actions (eg force , but not in intensity stronger than the actions that represent the danger).

On the basis of everything that has been stated before, it can be concluded that the possession, despite the fact that it is not a subjective real right, is a central institute in every property-legal system. In our Law on Property and other real rights, the possession is regulated in the part after the ownership, and before the other real rights.

Science classifies some of the functions of possession as follows: *Function of the publicity, function of presumed ownership, condition for acquiring the right of ownership, as the main real right and function of continuity.*

The function of the publicity is perceived in the fact that the de facto power of the thing as well as the apprehending actions as a content of that de facto power of the thing are performed visibly. (In the case of movables, the exercise of de facto power over them is seen, while in the case of immovable things, the publicity is expressed in the registration in the public books for the registration of real estate rights)

The function of presumed ownership derives from the subjective conclusion that the one who holds the thing or exercises the right (to servitude) is also the owner of the same thing.

The function of possession as a condition for acquiring the right of ownership is regulated in the Law on Property and other real rights, whereas maintenance is regulated as a legal way of acquiring the right of ownership of a conscientious possessor of movable and immovable property (Article 124, Law on Property and other real rights) and others.

The function of continuity of possession in the legal system of RHM is provided through the legal protection provided for each form of possession, which ensures continuity in the exercise of power over that thing, ie realization of the authorizations that constitute the content of the de facto power.

8.Conclusion

From the above presentation on the notion, elements, concepts, types of possession, acquisition, protection and functions of possession, several conclusions can be drawn.

Regarding the notion of possession, one realizes the fact that although possession is not a subjective real right, it is a de facto power of things that exists independently of the subjective real law and is legally regulated by legal norms, which becomes a legal category, ie an institute of civil right. As for the elements of possession, depending on which concept of possession they accept, the legal order recognizes two elements of possession: the material (existence of de facto authority over the thing) and the psychological element (the will to keep the thing as its own). These elements are accepted by most modern legal orders, and have been recognized since Roman law.

From the above regarding the concepts of possession, and from the provisions of the Law on Property and other real rights regarding possession, it can be concluded that the Republic of North Macedonia belongs to the group of countries where the Pandekt law is accepted, and consequently are followers of the objective (modern) conception of possession, which considers that in order to establish

possession, only the material element is needed, ie the actual power of the thing, and not the will. (Art. 167, Law on Property and other real rights). However, in the scientific determination of possession, the authors believe that in addition to the actual power of the thing, it is necessary to have a minimum will to use the thing in its own interest, regardless of the quality of that will, which leads to the conclusion of the Law on Property and other real rights that the simple holder (detentor), who on the basis of employment or similar relationship has no will, but only exercises de facto power in someone else's name, is not considered as a possessor. (Art. 168, Law on Property and other real rights).

Since the RNM belongs to the countries that accept the objective conception of possession, it is considered that the possession is acquired by establishing the de facto power of the thing that can be established by a unilateral act or by a legal act. The manner of establishing that de facto power is also legally regulated in the Law on Property and other real rights. As for the termination of the possession, although the principle of permanence of the possession is proclaimed, there are still some reasons for the suspension or termination of the possession. The Law on Property and other real rights explicitly stipulates that not any temporary spatial distance of the possessor and impossibility to perform the apprehending actions that constitute the content of the de facto power of that thing is considered termination of possession, but in Articles 190 and 191 it regulates the cases of relative and absolute termination of possession.

The need to protect the de facto power of things has its roots in Roman law. Modern legal theory knows several views on the basis (reason) for the protection of possession. From what has already been mentioned, both from the Law on Property and other real rights and from LCP, it follows that the real legal science in the Republic of North Macedonia finds the reason for protection of the possession in ensuring social order and peace.

In the legal system of RNM, the provisions of the Law on Property and other real rights (art. 181-189) and LCP (art. 411-416) regulate the legal protection of the possession, which prescribes the lawsuits in case of obstruction or revocation of possession, the beginning of court proceedings (by filing a lawsuit before a competent court). Regarding the unauthorized obstruction or revocation of possession, the Law on Property and other real rights does not give an answer about the meaning of these terms, which in the future would be necessary to clarify their meaning, to help both the case law and the authors dealing with scientific determination of possession as an institute of civil law. The lawsuits of the possessors that are available to the possessors enable the judicial protection of the possession of things and rights, regardless of what it is (conscientious, unlawful, etc.).

In the Law on Property and other real rights, possession is given great importance, starting from the position in which it is placed in the text of this law. Although on the basis of the above it is concluded that possession is not a subjective real right, in our legal order it is a central institute in civil law. The importance of possession is also emphasized in comparative law, where in some laws the matter of possession is regulated before property and other real rights.

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