

SECURITIES AND THEIR IMPACT ON THE JUDICIAL-CIVIL RELATIONS

Burim HALITI*

PhD Candid. at the South East European University in Tetovo,
Republic of North Macedonia

ABSTRACT

This work represents a concept of the judicial nature of the securities, the procedures for issuing the securities, the characteristics of the securities, legal basis of the securities, and the practical elaboration of some types of securities. In the contemporary countries there are attempts through securities to create a stability in the judicial-civil life, and in finances, as well, which do have influence in the economic development of the country in a direct manner. By this work we have reached to understand that the securities are very important for the judicial-civil and financial relations, have direct impact on the economic development of the country, through the securities is possible easier movement of the stock, the securities serve as financial means, and by this work we have understood that the securities represent an insurance in the aspect of doing judicial-civil and financial relations, because there is no direct use of money, but the money are indirectly used through securities which do contain a property right. The securities have a payment, developing, planning and supporting, financial, property character, etc.

Key words: The securities, characteristics of securities, types of securities, legal basis of securities, and securities themselves contain a property right.

Introduction

By this work there are explained the main chronological characteristics of the securities in the theoretical aspect, during the period when the securities are applied or used in their practical aspect.

It is treated the legal basis and the aspect of the judicial nature of the securities in the Republic of Kosovo because it is of great importance to know the judicial nature of the securities, as we surely know from this derive the judicial effects of the securities.

The securities are of great importance in the contemporary countries because in the most of the cases serve as monetary means in exchanging valued stocks, and this is relevant in the judicial and civil sciences, because through these scientific disciplines are theoretically studied and analyzed the securities.

A very important role in using the securities represents the security aspect, because the higher use of the securities the lower is the possibility to adopt or put at risk the person which has this right.

Using the securities means to make a trade exchange or to make a monetary service by not having monetary means with you, and this means that a person is less at risk in the aspect of the physical security.

The securities have direct impact on the economic development of the country with regard to creating and applying the developing economic policies, because there is a facilitation of the procedures in the aspect of making payments, there is less administrative bureaucracy, and facilitation of the trade communication between the various trading companies which are able to achieve big contracts in the international aspect.

The securities are very important in the judicial, civil and financial relations, have direct impact on the economic development of the country, by the securities it is enabled easier movement of stocks, the securities serve as payment means, and we do also understand by this work that securities represent an insurance in realizing the judicial and civil, and financial relations, since we do not have a direct use of money, but the money are used indirectly through the securities which themselves contain a property right.

The judicial meaning of the securities

* The author is a PhD Candid. at the South East European University in Tetovo, Republic of North Macedonia. He works at the Central Directorate of Customs of Kosovo since 2011, and he is a member of the board of the Institute for Legal and Democratic Studies. The author is actively participating in the organizations of the civil society for various issues like legal, political, economical ones in the Republic of Kosovo.

Address: Livoç i Ulet – 60000 Gjilan, Contact: phone no.: +383 44 – 785 857, e-mail: burimhaliti@live.com.

The securities in the contemporary meaning and in the judicial aspect have special importance for the judicial sciences, because it is explained the meaning of the securities in the theoretical aspect, and it is also explained the practical application of the securities in the contemporary countries.

In the theoretical aspect the securities have various definitions and meanings, but in our country the securities are understood as written documents which do contain a property right. According to Prof. Dr. Mehdi Hetemi "*The securities are written documents in which can be determined some property right which is incorporated on a paper and it is necessary to have the security*"¹. From this we come to the scientific conclusion for the necessary existence of the securities, and within this paper there should be a property right. Whereas according to Dr. Abdulla Aliu, "*The security is a written document, which contains a property value, the owner of which by representing the security can realize some right that is written on it*"². According to this concept the security is a written document which contains a property right, which can be used by the owner. The well-known researchers Vedrish and Klariq in relation to the securities have said: "*The security is able to be a subject of the real law, for instance subject of the property law and the mortgage law*"³. According to this the concept of the securities is a narrow one, and includes only the judicial and civil issues with the property character of the mortgage, but the contemporary concepts for this issue have a wider meaning including the trading and economic relations.

The securities have a judicial meaning when they are created in the form envisioned by the law, and in our country, the Republic of Kosovo the main and the only form in which are created the securities is the written form.

The judicial meaning of the securities in the Republic of Kosovo is determined by the law for judicial relations no. 04/L-077, in which article 217, section 1 says that: "*The security is a written document by which the issuer is obliged to fulfill the obligation (liability) written in this document to the legal owner of it*"⁴. The judicial meaning of the securities derives directly from this definition and this issue is regulated so every security is a written document which means that the securities should always be composed in a written form, and the one that issues the securities is obliged to fulfill the obligations (liabilities) deriving from the security to the legal owner of the security.

The role and the importance of the securities in the judicial, civil and financial relations

The securities are important in the work of the state institutions in the economic and judicial aspect because the judicial-civil and financial relations in the modern countries are necessarily for the good work of the country in the public sphere and the private one, as well. Through the securities we have the creation of the judicial-civil relations, and they are important since they have a multiple role in the judicial, civil and financial relations:

✧ The securities are presented as means for creditation or merely said the property right which is incorporated in the security represents some kind of a guarantee or a credit to realize some judicial, civil and financial work,

✧ The securities also have the importance since they can be used as payments means. This means that in the contemporary world it is of great importance that the judicial, civil and financial relations are done through a payment for the work done, and in this case the securities have the role of the payment.

✧ The securities also have a role in the security field, because there is no need to use the money in the physical aspect, but there are used the securities, which means that the realization of the judicial, civil and financial relations has an insurance because if someone wants to gain a security is not valid if the owner of the security is not the legitimate one, and

¹ Prof. Dr. Mehdi Hetemi, "E drejta në njohuritë themelore të së drejtës afariste", publisher University FAMA, Pristina 2006, p. 291.

² Prof. Dr. Abdulla Aliu, "E drejta civile, publisher University of Pristina, Pristina 2013, p. 284.

³ Vedrish, Martin & Klariq, Petar, "Gradjansko Pravo, Narodne novine. Zagreb, 2003, p. 610.

⁴ Law for liability relations no. 04/L-077, article 217 (Definition), section 1; date 10 May 2012, Pristina.

✧ The securities are important in the aspect of the circulation of means because through the securities we have the stock movement and the right to move in the judicial, civil and financial aspect. Through the securities there are done actions for buying and selling various stocks in doing judicial acts, which means the securities are important in the circulation of means and in the rights belonging to the real-judicial character, so the right derives from the value or the property right.

The categorization or the division of the securities

The categorization or the division of the securities is necessary for the theory because through this is given the meaning and the explanation in details what are the types of the securities. *The securities are divided in many types in accordance with the criteria set but according to Prof. Dr. Mehdi Hetemi the securities according to the official criterion that the security contains are divided in: securities according to the name, according to the order and according to the bearer*⁵. The primary reason why the securities are divided in these three groups is because every security contains some property right and that property right should be used by a certain person, and according to this division is known who has the right to use that security containing some property right. This identical division of securities is made in the legal aspect in the Republic of Kosovo, specifically by the law no. 04/L-077 for liability relations in article 219, where the securities are divided according to the name, order or bearer.

Securities according to the name – are the securities in which is exactly written the name and all the data of the physical persons of legal persons in relation to the property right that the security contains, and is decisively mentioned who is the person that has the right to use that security. The person mentioned in the security has the right to use the property right which is included in the security should be a legitimate person of that security.

Securities according to the order – are the type of the securities which in themselves contain a person who is authorized and legitimate to use the property right which derives from the security, but this right can be transferred by this person to another person and gives the possibility to the third person to use a security even that is not issued for him at the beginning, but this security later has taken this direction or status. The main characteristic of the securities according to the order is that this type of securities can be transferred to another person in the aspect of using the rights in a simple and uncomplicated manner.

Securities according to the bearer- imply that the legitimate person to use the property right deriving from this security is the person that owns that security, and to this possession has come in a legal manner. *The securities of the bearer are those in which the one that has the security, has the right to realize the right written in the paper (security)*⁶. According to this, in the securities of the bearer there is not written the name of the person that issues it, and the thing that who has the right to use this security is going in the direction that everyone that owns in a legal manner has the right to use it in accordance with the security.

Securities according to the legislation of the Republic of Kosovo

The securities beside the theoretical aspect by the intellectuals, lecturers, professors, and legal experts in the Republic of Kosovo, have the legal treatment, as well, by the Law for Liability Relations no. 04/L-077, adopted by the Assembly of Kosovo on 10 May 2012, which regulates it in the legal aspect.

With the law for liability relations in Kosovo the securities are regulated in the subtitle 2, article 217, where the securities are specified as written documents which means that the securities cannot be in another form but only as written documents, and there should be respected the formality principle. The securities oblige the issuer to fulfill the obligations expressed in a security to the person who in a legal manner owns that security.

In order to compose the securities there should be respected some elements which are envisioned in the legal aspect in the Republic of Kosovo, with the law for liability relations, specifically article 218, which says that the securities must contain these essential elements:

⁵ Prof.Dr. Mehdi Hetemi, "E drejta në njohuritë themelore të së drejtës afariste", publisher, University FAMA, Pristina 2006, page 521.

⁶ Prof.Dr. Nerxhivane Dauti, "E drejta e detyrimeve", publisher University of Pristina, Pristina 2004, p. 223.

1. *the designation of the security type;*
2. *signature, respectively the name and the living address of the issuer of the security;*
3. *signature, respectively the designation or the name of the person which whose order is issued the security or the name of the designation or the name is payable to the bearer;*
4. *the liability written exactly of the issuer of the security;*
5. *the place and the date of issuance of the security, whereas for those being issued in a serie the serial number, too;*
6. *the signature of the issuer of the security, respectively the facsimile of signature of the issuer of the security issued in a serie⁷.*

According to the legislation, if the securities do not contain one of the envisioned elements, it cannot be considered as a security in the judicial aspect, because there is missing one of the elements in composing it, which is of essential importance according to the law. But, in order to compose a security in accordance with the legal criteria there should be a designation of the security type, to precise who is the legal or the physical person issuing the security, there should be identified in the personal data aspect the legal or the physical person benefiting from the security and there should be precisely emphasized as a characteristic what is the type of the property right in the security. It is important in the legal aspect for the securities that they should be issued decisively by having the date and place of issuance, because this characteristic in the judicial context means that from the moment of creating-issuing begin the deadlines and the legal competencies.

The securities according to the legislation of the Republic of Kosovo are divided: according to the name, according to the order, and according to the bearer. The property right for realization comes from these three types of securities, and belong to all persons to whom are issued these securities. Those that are responsible for realization of the right, deriving from the security according to the name and the order, are the persons mentioned in the security, who should benefit from this security, or this right should be transferred to the other person, whereas according to the bearer the legitimate person for realizing the right is determined by the security, the one that brings the security and is the legal owner, for instance, the one that has the bus ticket uses the property right deriving from this security, but in condition to be the legal bearer, and should not be gained it in illegal actions.

The legal basis of the securities is relatively consolidating in the Republic of Kosovo because the law for liability relations determines some basic principles and specifies the important details needed for the application of the securities. We, as a society and as a state, should create legal and practical conditions to increase the use of the securities because they do have a direct impact in the judicial, civil, and financial development of the country.

Conclusions

The securities basically are known by all, that in the theoretical aspect are written documents, where the issuer transfers a property right to a person seeking to undertake a security, and in the same time the issuer is obliged to respect that right designated in the security. According to the contemporary theory and the legislation of the Republic of Kosovo we have three types of securities, according to the name, according to the order, and according to the bearer, but it is important that the securities have some characteristics which are of great importance in the aspect of their theoretical treatment:

- The securities have a payment character because through them the economical subjects which have a high economic credibility and have a high standard of the development are applying the securities as payment means, and this means that we have more insurance in the aspect of making the payments in the local level, and the international level, as well.

⁷ Law for liability relations no. 04/L-077, article 218 (Essential elements), section 1; date 10 May 2012, Pristina, page 67.

- **The securities have a developing character** because they directly have impact in the economic development of the country by helping the private sector, and they represent a big release for the public sector, as well.

- **The securities have a planning character** because the various trading companies which do develop economic activities are obliged in the judicial, civil and financial relations to plan them in a manner of using the securities.

- **The securities have a supporting character** because they do support the private sector instead of the monetary means, and this makes easier the use of the stock movement by the trading companies.

- **The securities have a financial character** because they do have a direct impact in the financial incomes and the expenditures of the various trading companies, because the higher the application of the securities the lower are the physical financial incomes, so there are more securities which are a property of the economic subjects.

- **The securities have a property character** because within the securities is hidden or is realized the right which has a property character, and by this is identified the security of the other common papers.

Literature

Prof. Dr. Nerxhivane Dauti, “Kontratrat”, botues Universiteti i Prishtinës, Prishtinë 2016;

Peter Bydlinski, “E drejta Civile”, botues Education Centre L.L.C, botimi i 6-të, viti 2015, Prishtinë;

Prof. Dr. Abdulla Aliu, “E drejta civile, botues Universiteti Prishtinës, Prishtinë 2013;

Prof. Dr. Nerxhivane Dauti, “E drejta kontraktuese”, botues Universiteti i Prishtinës, Prishtinë 2013;

Prof. Dr. Ejup Statovci, “Marrëdhëniet pronësore juridike në sendet e paluajtshme në KSA të Kosovës”, botues Universiteti i Prishtinës, Prishtinë 2009;

Prof. Dr. Ejup Statovci, “Mbrojtja e pronësisë” studim komparativ, botues Universiteti i Prishtinës, Prishtinë 2009;

Prof. Dr. Mehdi Hetemi, “E drejta në njohuritë themelore të së drejtës afariste”, botues Universiteti FAMA, Prishtinë 2006;

Prof.Dr. Nerxhivane Dauti, “E drejta e detyrimeve”, botues Universiteti i Prishtinës, Prishtinë 2004;

Vedrish, Martin & Klariç, Petar, “Gradjansko Pravo, Narodne novine. Zagreb, 2003;

Prof.Dr. Sabahudin Komoni, “Financat”, Prishtinë;

Dr. Aleksander Periq: “Teoria financiare dhe politike”, Beograd 1976;

Jovan Lovqevic, “Institucionet e financave publike”, Beograd, 1974;

Richard T. Ely, PHD dhe LLD: professor I politikës ekonomike në Universitetin e Wisconsinit, “Budget making in a democracy”, New York;

Kushtetuta e Republikës së Kosovës, Qershor 2008 (Constitution of the Republic of Kosovo, June 2008);

Ligji për marrëdhënieoet e detyrimevenr. 04/L-077; datë 10 maj 2012, Prishtinë
(Law for liability relations no. 04/L-077; date 10 May 2012, Prsitina);

Rregullore per Tregun Primar dhe Sekondar të Letrave me Vlerë të Qeverisë së Kosovës, Ministria e Financave, Prishtinë 2011

(Rule for Primary and secondary trading of securities, Government of Kosovo, Minisry of Finances, Pristina 2011);