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## ***FUTURE THINGS AS AN OBJECT OF REAL RIGHTS***

**Abstract:** *The paper aims to answer the question whether the concept of "future things" is compatible with property relations by addressing the issues such as: future things as an object of real rights, future things as real securities, transfer of real rights on future things, and future things as an object of enforcement proceedings. The analysis provided in this paper shows the COVID-19 crisis has brought many repercussions, not only to the public health systems in Europe but also to the European economy that has sustained losses during the pandemic. In such dire conditions, certain Macedonian financial institutions (such as banks) have offered financial support to the government and have lobbied for some benefits in return. Unfortunately, the benefits that banks have lobbied for threaten the stability and consistency of the civil law system. The situation raises concern among scholars who have urged for the preservation of the civil law institutes so that the short-term legal solutions implemented in haste for the benefit of some entities (banks) will not cause irreparable long-term damage to the overall civil law system. The authors analyze the provisions of several Macedonian legislative acts that implement the concept of future things in some areas of property law, such as: the exercise of real rights on future things, future things as real securities, transfer of right on future things, and forced sale in enforcement proceedings. The main objective of the analysis is to demonstrate that regulating "future things" as an object of real rights is not sustainable due to the nature of these rights.*

**Keywords:** *civil law, property law, future things.*

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## 1. Introduction

The most common and widely accepted definition of real rights is that they represent the exercise of a direct power over the object of real rights (Живковска, 2005: 20-21; Групче, 1983:114-115; Atias, 1999: 34; Gavella, Gliha, Josipović, Stipković, 1992 :41). As we can conclude from the basic definition on real rights, the power granted by those rights extends over the object and enables the holder of the real right to use and to dispose with that object in a manner consistent with the type of real right acquired. The holder of the real right is also entitled to exercise the granted power directly, meaning independently and without requiring assistance from a third party. The extent of the power granted by real rights varies, depending on the type of real right. Ownership is a type of real right that grants full power over the object of ownership: the power to possess, to fully use, to dispose or even to destroy the object of ownership. All other types of real rights (servitudes, pledge, real burdens, etc.) grant only partial power over the object. For example, servitudes grant the power to its holder to use the object owned by another in a certain way; pledge grants the power to the pledge creditor to demand sale of the pledged object belonging to his/her pledge debtor; real burdens (encumbrances) grant the power to the holder to demand certain actions from the owner of the burdened object; etc. The direct power that the owner, or the holder of another real right, exercises over the object of his/her real right has also an *erga omnes* effect against all third parties. It means is that all third parties must recognize and respect that power by remaining passive and not interfering with the exercise of the real right.

Considering the nature of real rights and how the power they grant is exercised over the object of real rights, we pose the question: What can be an object of real rights? A short answer is that only things of material nature can be an object of real rights. Why? In order for someone to exercise a right that by nature grants power to use and to dispose with the object of that right independently and without requiring the assistance of a third party, the object has to be tangible (real). It is no coincidence that such rights are called *real*. The existence of a real object over which a real right can be exercised is the main thing that distinguishes real rights from the rights arising from obligations. The owner, or the holder of another real right, is not dependent on the actions of a third party in order to be able to exercise his/her real right, unlike the creditor who depends on the actions of the debtor in order to fulfill his/her rights arising from the obligation. Unlike the rights arising from obligations, real rights bring on a level of certainty to its holders, ensuring that they will be able to exercise the real right they have acquired. The certainty stems from the fact that real rights exist over a real object; thus, the real right can be exercised as long as that object exists.

Contemporary property law continues to base its regulation on real rights respecting the notion of real rights as *rights in rem*. Regulating real rights as rights over material things contributes to the stability of the property law system where real rights continue to represent the solid and static bedrock which all other civil law relations stand on. However, some concessions have been made for the sake of economic development. For example, usufruct is granted over rights that give dividends or other benefits; rights with monetary value can be pledged; the right to build (or the right of long-term lease as it is called in the Macedonian law) falls under the legal regime governing immovable things because it is considered as a *fictitious real-estate* upon which a building or another structure can be erected, and we also have the concept of *future things* as an object of real rights.

In this paper we will discuss the concept of *future things* as an object of real rights and the extent to which it has been implemented in the Macedonian property law system.

## **2. The meaning of the term *future thing* in the Macedonian property law system**

In the Macedonian property law, there is no comprehensive definition of the term *future thing*. The basic Act on Ownership and other Real Rights (hereinafter: the ORR Act)<sup>1</sup> does not recognize the concept of *future things* as an object of real rights. According to this basic Act, there are four legal requirements that make a thing eligible to be an object of real rights: 1) the thing must be part of the material world (it must be real); 2) the thing should be suitable to be dominated by men; 3) the thing should be individualized; and 4) the law should allow for real rights to exist over it (Article 12 of the ORR Act). Considering these four requirements imposed by the ORR Act, it is obvious that *future things* fail to meet the first legal requirement – to be part of the material world. As suggested by the term itself, *future things* are assets that are yet to be created some time in the future. For this reason, the ORR Act does not recognize them as eligible to be an object of real rights.

The term *future thing*, or more precisely *future object*, is explicitly mentioned in the Macedonian Civil Obligations Act<sup>2</sup>. According to the Civil Obligations Act (COA), the sales contract can be concluded for a *future object* (Art. 446(3) COA). However, the Act does not go on to explain what *future object* is in the legal sense, nor does it specify at what moment the right of ownership will be acquired.

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1 Закон за сопственост и други стварни права, *Сл. весник на РМ*, бр. 18/01 (2001).

2 Закон за облигационите односи, *Сл. весник на РМ*, бр. 18/01 (2001).

The Contractual Pledge Act (CPA)<sup>3</sup> also contains provisions declaring that *future objects* can be an object of the right of pledge (Art. 7 (1) CPA). This Act also does not contain any provisions defining *future objects* or even providing guidance to what they are, and under what rules and conditions they can be pledged. In theory, pledging *future objects* or *future things* means pledging natural fruits that are yet to be born from the fruitful thing or buildings and other structures under construction.

The Act on Obligations and Real Property Relations in Air Traffic<sup>4</sup> prescribes that aircrafts under construction can be owned and mortgaged (Art. 144 and 157 of the Act). Regarding the right of ownership over aircrafts under construction, the Act states that it entails ownership over the parts already incorporated in the aircraft under construction, as well as ownership over the parts that are especially designed to be incorporated in the particular aircraft under construction even if they are still in factories or workshops that produced them. We can conclude from these provisions that the Act views the right of ownership over the aircraft under construction as ownership over its existing components. As for mortgaging the aircraft under construction, the Act states that same rules apply as if mortgaging an operational aircraft.

The Inland Navigation Act<sup>5</sup> contains provisions similar to the provisions of the Act on Obligations and Real Property Relations in Air Traffic. The Inland Navigation Act (INA) also states that boats under construction can be owned and pledged (Art. 111 INA). Ownership of boats under construction actually implies ownership over its exiting components incorporated or intended to be incorporated in the particular boat under construction (Art. 114 INA). As for pledging the boat under construction, the Act states that it is done under the same provision as pledging an operational boat (Art. 30 INA).

The Construction Act<sup>6</sup> uses the term *future structure* when referring to structures that are planned to be constructed in accordance to the construction project and the adjoining documentation (Art. 62-b CA).

The term *future structure* is also used in the Real Estate Cadastre Act.<sup>7</sup> The REC Act regulates the pre-registration of the right of ownership over the *future structure* in a pre-registration sheet in the Real-Estate Cadastre. The REC Act

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3 Закон за договорен залог, *Сл. весник на РМ*, бр. 5/03 (2003).

4 Закон за облигационите и стварноправните односи во воздушниот сообраќај, *Сл. весник на РМ*, бр. 85/08 (2008).

5 Закон за внатрешна пловидба, *Сл. весник на РМ*, бр. 55/07 (2007).

6 Закон за градење, *Сл. весник на РМ*, бр. 130/09 (2009).

7 Закон за катастар на недвижности, *Сл. весник на РМ*, бр. 55/13 (2013).

does not actually define what *future structure* is, but it is obvious from its provisions that the term refers to buildings or other structures under construction.

The Enforcement Act<sup>8</sup> regulates the enforcement proceedings over *future structures*. It prescribes that the real estate that is described in a pre-registration sheet (i.e., the buildings and other structures under construction) can be subject to enforcement proceedings. According to the Enforcement Act, the enforcement proceedings should be conducted as if real estate is being sold (Art. 205-a EA).

### **3. Acquiring real rights on *future things* in the Macedonian property law system**

When discussing the issue of acquiring real rights on *future things*, we have to underline that the lack of a comprehensive definition on what *future things* are in a legal sense, as well as the lack of detailed provisions on their legal regime, have given a free reign to all kinds of legal practices by notary publics, lawyers, public enforcers and investors, which mostly resulted in disputes for violation of real property right. In other words, when there is no regulation on what one should do, participants do whatever they want.

From the theoretical point of view, the fact that *future things* do not actually exist (i.e., they are not yet tangible/corporeal), makes the concept of acquiring real rights over *future things* rather problematic. Can we actually say that we have a right of ownership, or any other real right, over a thing that does not actually exist, and it is uncertain if it will come to exist one day? The simple answer to this question is negative: we cannot actually have ownership, or other real rights, over things that are not yet real (tangible) simply because we have no way of exercising real rights over things that are not real. That being said, we may look into the laws that embrace, to a certain degree, the concept of real rights over *future things*.

#### **3.1. Right of ownership on *future things***

*Prima facie*, the Macedonian legal system seems to include legislative acts that support the concept of ownership over *future things*, such as the Civil Obligations Act, the Act on Obligations and Real Property Relations in Air Traffic, the Inland Navigation Act, the Construction Act, and the Real Estate Cadastre Act. However, a closer look into the provisions of these acts reveals a different picture. In some of these acts, the provisions are inconclusive on whether the right of ownership is actually acquired over the *future thing*, or it is in the process of being acquired as the *future thing* is being created. In our opinion, the latter is more likely. There

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<sup>8</sup> Закон за извршување, Сл. весник на РМ, бр. 72/16 (2016).

are also laws that consider the right of ownership on *future things* as ownership on its existing components that will eventually be incorporated in it, which will ultimately lead to its creation as a real thing. In our opinion, this is not the same as having ownership over *future things*.

Looking into the Civil Obligations Act, we can note that it recognizes the possibility for a sales contract to be concluded by transferring the right of ownership over *future object*. Yet, the Civil Obligations Act (COA) does not address two key issues: 1) How will the seller enable the buyer to take possession over the *future object* which is the key element in completing the sale; and 2) How will the seller and the buyer meet the legal objective of the sales contract – the transfer of the right of ownership? As the COA provides no answers to these questions, we turn to legal logic in order to address these issues. The transfer of possession over a *future object*, as a key element in completing the sale, is not possible. The buyer is not able to take possession over the thing he/she is buying because the thing is not tangible yet. This means that the sales contract will not be actually completed until the *future object* becomes a real (tangible) thing. Once the *future object* becomes a real thing, the buyer can take possession over what he/she bought from the seller and, at that point, the sale will be completed. Reflecting on the issue of meeting the legal objective which is the transfer of the right of ownership over the *future object*, we conclude that the transfer of the right of ownership will also occur after the *future object* becomes a real thing. This is because, at the time of conclusion of the sales contract, the seller does not yet own the *future object (thing)* that he/she is selling. The seller will actually acquire ownership over the *future object (thing)* once it becomes real (tangible). From that moment on, the seller will be able to transfer the right of ownership onto the buyer, which will lead to fulfillment of the legal objective of the sales contract. In conclusion, sales contracts on *future objects* are in essence contracts concluded under a postponing condition. The condition that needs to be fulfilled is for the *future object* to become a real thing so that the sales contract can also be fulfilled.

Acquiring ownership over *future things*, such as aircrafts under construction and boats under construction, is recognized by respective laws regulating the legal regime governing such assets (the Act on Obligations and Real Property Relations in Air Traffic for aircrafts, and the Inland Navigation Act for boats). Even though these laws recognize that a person can have ownership over an aircraft or a boat under construction, the reality is that these laws actually recognize the right of ownership over the components that are incorporated or will be incorporated into the aircraft or boat under construction. We can all agree that having the right of ownership over the components of the aircraft or boat under construction is not the same thing as owning an aircraft or a boat. The difference is not of minor relevance since the nature and the quality of the

thing one owns determines the possibilities in exercising one's ownership right. This goes to show just how unsustainable the concept of owning *future things* actually is.

There is also a misconception promoted by the legal practice that the Construction Act and the Real Estate Cadastre Act recognize the right of ownership on buildings and other structures under construction as a type of *future things*. This is not actually true. The Construction Act considers buildings or other structures under construction as *future things*. However, it does not treat such things as someone's ownership. Quite the opposite, the Act actually states that the building or other structure under construction becomes eligible to be an object of ownership only after construction is completed in accordance to the building permit and the rules and regulation governing the construction process (Art. 95 CA). Once the respective authorities determine that the construction has been performed and completed legally, then and only then, the building or other structure can be registered in the Real Estate Cadastre as ownership of the investor that built it (Art. 96 CA). The Real Estate Cadastre Act is completely in-lined with the Construction Act. It allows for registration of the right of ownership over the building or other structure in a property sheet only after the construction process is completed legally and the documentation in support of that has been issued by the competent authorities. In legal practice, there is a certain level of confusion caused by the pre-registration sheet issued by the Real Estate Cadastre Agency. The pre-registration sheet is a document that contains information about the building or other structure under construction, such as: information about the investor, the building project, the building permit, etc. The pre-registration sheet also includes the pre-registered ownership rights of people that concluded pre-sales contracts with the investor for the building or some other structure under construction. However, it needs to be noted that the pre-registration sheet does not have the same legal value as the property sheet. The property sheet is a conclusive proof that the right of ownership on real-estate has been acquired, while the pre-registration sheet only provides publicity and priority for the people who have pre-registered ownership rights. According to the Real Estate Cadastre Act, people with pre-registered ownership rights have priority, before all others, to register their right of ownership in a property sheet once the building or some other structure has been completely constructed (Art. 172(5) REC Act). Having priority in acquiring the ownership right is not the same as actually having acquired the ownership right. The pre-registration sheet holds no guarantee that the people who pre-registered their ownership rights will acquire those rights eventually. Whether the pre-registered ownership rights will actually be acquired depends on the *future thing* (the building or other structure under construction) becoming a real thing (fully and



legally constructed building or some other structure). In addition, we wish to underline that the Real Estate Cadastre Act does not even consider *future things* as real estate (future or otherwise). According to the Real Estate Cadastre Act, only land and fully constructed buildings, infrastructure and other structures of permanent nature are considered as real estate (Art. 3(1) REC Act).

The analysis of relevant provisions of the Civil Obligations Act, the Act on Obligations and Real Property Relations in Air Traffic, the Inland Navigation Act, the Construction Act, and the Real Estate Cadastre Act reflects the ambiguous position of the Macedonian legislator on the issue of the legal regime of *future things* as an object of the ownership right. It is clear that the legislator cannot circumvent the obvious problem concerning *future things*, which entails the fact that they are not real and are therefore unsuitable to be an object of ownership, or another real right for that matter. So, why is there an inclination to treat them as such? The reason lies in the economic interests of investors and creditors in the real estate market. All the provisions that are put in place are intended to provide investors and creditors with the opportunity to develop the real estate market by trading not only with the existing real estate but also with buildings and other structures under construction that will eventually become real estate. The Real Estate Cadastre Act has also put in place the mechanism (the pre-registrations sheet) aimed at protecting the buyer of *future things* from being defrauded by investors. The pre-registration sheet made the trade with buildings and other structures under construction public. By envisaging the pre-registration sheet, the Real Estate Cadastre Act put an end to the fraudulent sales practices of investors that involved multiple sale of the same apartment or office space onto several different persons, causing disputes over the right of ownership. However, no regulation can be put in place to protect buyers from the uncertainty that accompanies all those that aspire to acquire ownership over buildings and other structures under construction. In the trade with buildings and other structures under construction, it is uncertain whether they will ever be finished and turned into real estate. There have been more than a few cases where the investors halted construction for lack of funds and then proceeded to go into bankruptcy, leaving the building or other structure under construction unfinished and leaving the buyers without the pre-paid apartments and offices. Another set of problems for buyers of buildings or other structures under construction were brought on by investors who conducted construction contrary to the issued building permit. According to the Construction Act, if construction is conducted contrary to the issued building permit, the permit is annulled and the building or other structure is deemed to be illegal, which prevents buyers from ever acquiring ownership over the pre-paid apartments and offices. These are the problems that neither the laws nor the courts could resolve to everyone's



satisfaction. We simply must accept that any buyer participating in the trade with buildings and other structures under construction assumes the risk linked with this type of trade which boils down to never acquiring the right of ownership.

### ***3.2. Right of pledge on future things***

The Contractual Pledge Act recognizes the possibility for a *future object (thing)* to be pledged (Art. 7(1) CPA). Pledging *future things* is also possible according to the Act on Obligations and Real Property Relations in Air Traffic, which states that aircrafts under construction can be mortgaged (Art. 157). The same is prescribed in the Inland Navigation Act, which states that boats under construction may be pledged (Art. 111 INA).

The Contractual Pledge Act does not specify what type of *future things* may be pledged, nor does it specify the legal requirement for pledging *future things*. On the other hand, the Act on Obligations and Real Property Relations in Air Traffic specifies that aircrafts under construction are to be considered as immovables and, thus, they are to be mortgaged under the same conditions as operational aircrafts. Under the Inland Navigation Act, boats under construction are considered to be movable things. Pledging boats under construction is done under the same conditions as pledging operational boats.

Since the Act on Obligations and Real Property Relations in Air Traffic and the Inland Navigation Act are special law regulating the legal regime governing aircrafts and boats, the Contractual Pledge Act remains applicable to all other *future things* that are being pledged. Considering that the Contractual Pledge Act does not specify the type of *future things* that can be pledged, it is left to open interpretation. It also remains unclear whether the Contractual Pledge Act intends for *future things* to be pawned, mortgaged, or both. In order to answer how *future things* can be pledged under the Contractual Pledge Act, we should first know what legal regime *future things* generally fall under. As we have shown, there is no law actually defining what the term *future thing* entails. From the various provision we have analyzed, we can conclude that buildings and other structures, aircrafts and boats under construction are considered as *future things*. Pledging of aircrafts and boats is regulated by special law, so that the Contractual Pledge Act has only subsidiary application. However, the Contractual Pledge Act is applicable in pledging buildings and other structures under construction. But, how should they be pledged? Should they be pawned or mortgaged? Based on what we know about the legal regime of buildings and other structures under construction, we can conclude that they are considered as *future things*, but not real estate under the Real Estate Cadastre Act and Construction Act. If they do not fall under the legal regime of real estate, then they

must fall under the legal regime of movable things, which consequently means that they can be pawned, but not mortgaged. In legal practice, this does not make much sense because buildings and other structures under construction could eventually be turned into real estate. For this reason, in legal practice, buildings and other structures under construction are being mortgaged, while the fact that they are not considered as real estate *per se* is being ignored. But that is not the only fact that the legal practice ignores when mortgaging buildings and other structures under construction. It also ignores the two basic legal requirements for the right of pledge to be valid under the Contractual Pledge Act: 1) the pledged object must be owned by the pledge debtor; and 2) it must be tradable (Art. 10 CPA). Buildings or other structures under construction are not yet owned by anyone, nor are they freely tradable. The other issue that is being ignored is more of a theoretical nature: we wonder how *future things* that are not yet real could serve as real securities for securing claims.

In spite of all legal obstacles, the lawyers draft mortgage contracts for buildings or other structures under construction, notary public notarize such contracts, and the Real Estate Cadastre Agency registers those mortgages in the Real Estate Cadastre pre-registration sheets. All this is done in line with the understanding that all mortgages on buildings and other structures under construction could not be enforced until construction is completed. This was made clear by the courts which ruled in several cases on delaying the enforcement of mortgages on buildings under construction until construction is completed.

#### **4. Forced sale of *future things* in enforcement proceedings**

For a period of time, there was a consensus that real rights like the right of ownership and the right of pledge on *future things* are to be considered as actually acquired once the *future thing* becomes a real thing. Consequently, the exercise of these real rights was possible only after the *future thing* had become a real thing. However, this consensus was not in line with the interest of the banking sector. Banks, as major creditors on the real estate market, began lobbying for legislative changes that would enable them to enforce mortgages on buildings and other structures under construction without delay, i.e., without having to wait for the construction process to be completed. The intense lobbying resulted in passing an amendment to the Enforcement Act (EA) in 2018, when Article 205-a was introduced. According to Article 205a of the EA, buildings and other structures under construction described in the pre-registration sheet can be subjected to forced sale in enforcement proceedings under the rules for forced sale of real estate. If the entire building or structure under construction is being sold, the sale also includes the investor's right to build. If a portion of the build-

ding or structure is being sold, the sale does not include the right to build. This is the general intent of Article 205-a of the EA; but, as the Article was drafted so incomprehensibly, public enforcers have refused to apply it in enforcement proceedings. They usually refuse to conduct an enforcement proceeding under Article 205-a of the EA claiming that it is practically inapplicable. They also state that Article 205-a is contrary to a basic requirement of the Enforcement Act, according to which enforcement proceedings can be conducted over property belonging to the debtor, and the buildings or structures under construction are not the debtor's property yet. We completely agree with those arguments. The ones that did not agree were the representatives of the banking sector; they stand firm on the position that Article 205-a of the EA must be enforced in favor of banks as creditors. Their position is absurd, primarily because, if Article 205-a is to be enforced, it should be enforced in favor of all creditor and not just banks. Any other interpretation or application of these provisions would be unconstitutional because it will cause inequality of rights.

Upon analyzing the provisions of Article 205-a of the Enforcement Act (EA), we notice problems in its application. One of the problems in Article 205-a is the treatment of buildings or other structures under construction as real estate when there are no legal provisions in substantive laws to support such treatment. This directly affects how the building or other structure will be appraised in the enforcement proceedings when it is sold as a whole. In Article 205-a EA, it is stated that the value of the building or structure under construction will be appraised as real estate taking into account the phase of construction it is found in. In practice, authorized appraisers calculate the value of what they find on the construction ground. We do not consider such appraisals to be accurate if costs for finishing the building or other structure are not calculated, and if it is not taken into account that in some cases the construction may be funded (to some degree) by the buyers that pre-paid for the apartments and offices in the building under construction. If the entire building or other structure is being sold, the investor's right to build is sold along as well, but appraisers are not directed to appraise the value of the right to build. What is more peculiar is that the right to build is treated as part of the real estate, which is completely inaccurate since the right to build in Macedonian law is not a real right, nor does it fall under the regime of real estate. In our opinion, the approach of Article 205-a of the EA with respect to the enforcement on buildings or other structures under construction is flawed. What can actually be enforced is the right to build, since the building or other structure under construction is not yet eligible for trade. The reason why the legislator avoids taking this approach is because the right to build cannot be treated as real estate, and can only be transferred as an obligation onto the interested party. Transferring an obligation in enforcement proceedings is very

difficult since it requires consent of all concerned parties, some of whom are not even directly linked to the enforcement proceedings. The authority given to enforcers under the Enforcement Act does not allow for their interference in *inter partes* relations. By law, enforcers are only authorized to transfer claims, but not an entire obligation. So, if the right to build is to be enforced, the authority afforded to enforcers need to be amplified as well. Instead of doing things the right way, the legislator has opted, under the pressure of the banks' lobby group, to open the doors to free trade with *future things* as if they were real.

A different problem arises when part of the building or structure under construction is to be sold in enforcement proceedings under Article 205-a of the EA. This type of enforcement is conducted against the indebted buyer who has entered a pre-sales contract with the investor for an apartment or office in the building under construction. Article 205-a does not provide guidance to how the apartment or office should be appraised in the enforcement proceedings, which could lead to unfair treatment of the indebted buyer. The EA calls it sale, but what actually happens is that the person who wins the public bidding steps in place of the indebted buyer in the pre-sales contract with the investor. All this is enforced without informing the investor or asking for the consent of the investor as the other party in the pre-sales contract. Both types of "sale" regulated by Article 205-a are conducted contrary to the substantive laws and without just consideration of the rights of all parties concerned. Article 205-a of the EA does not provide the basis for fair treatment of the debtor in the enforcement proceedings, and it completely ignores the rights of other concerned parties that are not directly involved in the enforcement proceedings. The so called "sale" pushes enforcers to interfere in *inter partes* relations, which exceeds the boundaries of the authority they are afforded under the Enforcement Act.

Taking all things into consideration, we find that application of Article 205-a of the EA in enforcement proceedings will violate the rights of debtors because they will not get a fair appraisal of the value of the rights, they will be deprived of in the enforcement proceedings. As Article 205-a does not consider the rights of other concerned parties outside the enforcement proceedings, it is very likely that their rights will be violated as well.

The provisions in Article 205-a of the EA will also have a wider effect on the Macedonian property law system because they call for free trade with *future things* as if they were real. If this trend takes on in other legislative acts, it will gradually erode the nature of real rights. *Future things* would be freely traded and real right on future things would be transferred from one person onto another without any certainty that those rights will ever be actually exercised.

Ultimately, this will blur the difference between real rights and rights arising from obligations.

Both legal practitioners and legal scholars have voiced their opinion against the enforcement of Article 205-a of the Enforcement Proceedings Act. However, these opinions have fallen on deaf ears. So far, the pressures of the banks' lobby group have prevailed before the authorities, supported by argument that the banking system will crush if Article 205-a is not enforced, or the argument that banks financially supported the Government during the COVID crisis and that the compensation is now due. In our opinion, neither of the arguments presented by the banks' lobby group is valid to support implementing a legal regime on *future things* that could potentially disrupt the entire property law system. By pursuing this path and enforcing Article 205-a of the EA, the legislator is "taking a jump from a high cliff into shallow waters", which will not end well. Instead of giving in to the pressure coming from lobby groups, the legislator should focus on amending Article 205-a of the EA and offering a more viable solution that will not be contrary to the material/substantive laws and will not disrupt the property law relations already put in place.

## 5. Conclusion

The existing legal provisions in the Macedonian legal system envisage that *future things* are an object of real rights. In our opinion, *future things* (objects) cannot be treated as such. They are neither movable nor immovable things; in fact, they are not even things in the strict legal sense of the word. There are no real rights that can exist on *future things* as anything more than a mere aspiration. The concept of *future things* is a legal construct created to enable economic activity primarily in the real estate market. The construct has its benefits but it should be made clear, both in applicable legislation and in practice, that no one can actually acquire real rights on *future things*. What can be obtained is a priority in acquiring real rights if and when the *future thing* becomes real. Economic activity in the real estate market should not include free trade of *future things* as if they were real estate. Instead, it should reflect the true nature of these relations which does not go beyond being an obligation.

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## **БУДУЋА СТВАР КАО ПРЕДМЕТ СТВАРНИХ ПРАВА**

### **Резиме**

Овај рад даје одговор на питање да ли треба прихватити концепт да будућа ствар може бити ствар у стварноправном смислу речи, тј. да ли може бити објект стварних права, да ли може бити предмет реалног обезбеђења, да ли се може с њом располагати (пустити је у промет), и на крају да ли будућа ствар може бити предмет извршења у извршном поступку. Анализа показује да је криза проузрокована корона-вирусом имала штетне последице по здравствене системе европских земаља који су се нашли у колапсу, као и по европску економију која је претрпела губитке током пандемије. У тим условима, одређене институције у РС Македонији, као што су банке, с једне стране пружају финансијску помоћ државним институцијама, а с друге стране траже погодности које, на жалост, доводе до урушавања правне природе грађанскоправних института. Оваква дволичност забрињава теоретичаре грађанскоправне науке који у овим ванредним околностима апелује на очување стабилности грађанскоправних института, како не би дошло до још већих проблема у одржању стварноправних система и њиховог урушавања ради задовољења појединачних потреба.

Ауторке овог рада анализирају одређене грађанскоправне одредбе у македонском праву које се односе на будуће ствари у свим сферама стварно-правног система (вршење стварних права на будућој ствари, реално обезбеђење на будућој ствари, промет будуће ствари, и принудно извршење на будућој ствари). Извршена критичка анализа има за циљ да покаже да се концепт нормативног уређења будуће ствари не уклапа у њену правну природу као објекта стварних права.

**Кључне речи:** грађанско право, стварно право, будућа ствар.