



## Termination of Obligation Relationships According to the Will of the Parties, Under the Law on Obligation Relationships of Kosovo

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**Abstract:** The establishment of relationship of obligations is the commitment of free and legal will in their fulfilment. In this way voluntary and law-based relations are realized voluntarily, ensuring that the obligations and the economic relations are developed and strengthened, and on the other hand, judicial proceedings are eliminated. The fact that for a long period of time, civil legal relations in Kosovo due to their unification with the code have resulted in disputes of different nature with which the judicial, arbitral and notary systems are faced. However, the issuance of the Law on Obligation Relationships is one of the great achievements in favour of especially relations of obligations, as well as of civil ones in general. In this paper, the purpose is the legal analysis of the voluntary termination of the relationships of obligations according to the Law on Obligation Relationships in Kosovo.

**Keyword:** Establishing Obligations; Fulfilment; Renewal; Confounding; Expiration of Time

### 1. Terminating Obligations through Fulfilment

Establishing the relationship of obligations, especially those of contracts, is the main principle of the will of the autonomy, the main purpose of which is the circulation of subjective rights. The fulfilment of the voluntary obligation goes in favour of the economic development of the country, legal certainty in the fulfilment of obligations by eliminating or attenuating the side effects that result from failure to meet the obligation in the reasonable time and place.

Fulfilment represents the manner of termination of the obligation with the will of the contracting parties and one of the main purposes when establishing the relationship of obligation. According to Article 277 of the Kosovo LOR, the notion and ways of fulfilling obligations are defined, fulfilment by the debtor or by a third party. Completion i.e. execution or payment, realization of the loan that is subject

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to the obligation relationship, while *the Payment means a real act by which the obligation is realized and the debtor is released from the obligation towards the creditor.*

Analysed from the aspect of legal effects, crucial issues related to the fulfilment of obligations relate to the entity that realizes the payment (identity), the deadline for fulfilment, and the subject matter of fulfilment. The deadline for fulfilling the obligations is the legal or contractual deadline set by the contracting parties for the fulfilment of legal obligations. Failure to meet the obligation within the legal deadline causes legal and contractual consequences in the payment of interest, or costs for non-fulfilment of obligations within the legal deadline (Kodi Civil Italian, 2014, p. 550).

### **1.1. Subjects of Payment**

Obligations are relationships with an *inter partes* effect, their fulfilment is carried out by the subjects of the relationship of obligations, which is realized primarily by the debtor, but in exceptional cases such as causing damage, and extending the effects to third parties, the obligations extend its effects to third parties and thus fulfilment of obligations, according to LOR, is also fulfilled by third parties.

For the fulfilment of the effective obligations, the conditions that the debtor must satisfy are decimated in Article 278, 279, 300 of the LOR. The fulfilment of the obligation coincides with the fulfilment of the main principle of the relationship of obligations by respecting the care of the good housekeeper, i.e. the care of an ordinary man in the fulfilment of his obligations. (Galogano, 2000, p. 715)

The debtor or third person must do fulfilment of the obligation to the creditor. Depending on the nature of the relationship of obligations, whether they are relationships of obligations of a personal or property character, the fulfilment of personal obligations is an obligation of the debtor and as such it cannot be conveyed or inherited. Meanwhile, property liabilities may be transferred or subrogated to third parties as a legal representative or contractor (Kodi Civil me praktike gjyqesore, 2014, p. 52). Fulfilment with the transfer of the right to the subrogate. *According to Article 281 point 1 of LOR, In the event of fulfilment of others' obligations, each payer may contract with the creditor, before fulfilment or in the case of fulfilment, so that the fulfilled requirement is passed to him with all rights or only with some accessory rights. 2. The creditor's rights may also be transferred to the payer on the basis of a contract between the debtor and the*

*payer made before the fulfilment. 3. In such cases, the subrogation of the creditor rights by the performer is created at the moment of fulfilment.*

Fulfilment of the obligation must be made to the creditor who at the time of making the payment must have the capability of action only in case the non-performance of the obligations causes damage to the creditor or in this way agreed with the contractor. In this manner under Article 287 *Fulfilment made to the creditor unable to act: 1. Fulfilment made to the creditor unable to act releases the debtor, if it has been useful to the creditor or the object of fulfilment is still with him. 2. A creditor unable to act may agree upon being able to act for the performance he has received at the time of his inability to act.*

### **1.2. The Subject of Fulfilment**

Fulfilment of the obligation coincides with the principal obligation of the debtor to submit the payment subject. The subject of the payment involves the delivery of the subject matter either in full or in part, which may be a sum of money or the delivery of the item specified in the contract. According to the LOR, substitution of the fulfilment with other subjects is also determined in order to fulfil the obligation.

As far as property liabilities are concerned, the LOR also precludes the possibility of fulfilling the contract when determining the fulfilment of the obligation with a sale order; Submission of a sale order: *If the debtor has delivered to the creditor any item or other right to sell, and from the realized amount to collect its claims while the remainder is handed over, the obligation expires only when the creditor receives from the realized amount.*

### **1.3. Deadline for Fulfilling the Obligations**

Deadline for fulfilling the obligations represents one of the special and important obligations due to the consequences to which it passes. Initially, the contracting parties with free will define the deadline, but it can be fulfilled prematurely if the contracting parties have designated it as a way of fulfilling it. If the deadline is not set, and the purpose of the work, the nature of the obligation and other circumstances do not require a deadline for fulfilment, the creditor may promptly demand the fulfilment of the obligation, while the debtor may in turn require the creditor to accept fulfilment. *1. When the deadline is exclusively contracted in the debtor's interest, he has the right to fulfil the obligation even before the agreed deadline but is obliged to notify the creditor for his purpose and to ensure that this is not done in an inadequate time. 2. In other cases, when the debtor provides the fulfilment before the deadline, the creditor may refuse the performance, and may*

*also accept and retain the right to compensation for damages, if he informs the debtor without delay.*

#### **1.4. Place of Fulfilment**

The place of fulfilment is also a special obligation to determine the fulfilment of the obligation by the debtor and the creditor or the assignment of the law. (Alishani. p. 9) The place of assignment is determined depending on the nature of the case, thus the debtor is obliged to fulfil the obligation in the permanent, respectively the last place of residence of the debtor (Kadriu, 2000 p.254).

However, if the debtor is a legal person, he can even fulfil his obligation in any of his headquarters. LOR, in Article 301 determines *the place of fulfilment of the monetary obligations*. 1. Monetary obligation is carried out at the place where the creditor has its headquarters, respectively the place of residence, and in the absence of the place of residence where he or she resides. 2. If the payment is made by order, the money is paid at the headquarters of the financial institution where the creditor's money is kept.

The consequences of the non-fulfilment of the obligation result in the debtor's obligation to pay interest on the debtor and the risk transfer on the side of the creditor to the debtor in the event of the debtor fulfilling the obligation.

#### **1.5. Termination of Obligations through Compensation**

Termination of obligations by compensation is the second viable way of extinguishing debt obligations. In this case, if there are mutual obligations between the debtor and the creditor, it may amount to the reimbursement of the values in the amount of the minimum liability. Compensation as a form of enforcing the obligation serves equality and avoids the risk of non-realization of the debt. Article 317 defines the general conditions; *the debtor can compensate his claim to the creditor with what he asks for if both claims have money as the object or other substitutable items of the same type or quality, and if both have reached agreement for payment.*

However, no claims compensation is allowed, which cannot be sequestered; items and valuables that have been given to the debtor for storage, borrowing, or those which he / she has illegally obtained, requests for intentional damage as well as claims arising from causing damage or legal obligation of food. (Nuni, A & Mustafa, I. & Vokshi, 2008, p. 159).

Compensation as a voluntary way of extinguishing duties is determined by law, contract or court decision. The main effect of termination of the obligation by compensation, results in the expiry of the obligation with compensation, and the termination of the creditor's claim, thus the debtor becomes creditor of his creditor. These three forms of compensation are recognized, legal compensation, which operates automatically when the legal conditions are met. This form of compensation applies to homogeneous obligations when the fulfilment condition is met, and the subject of fulfilment comes from items defined in gender. While, when the criteria are met during the court session, the judge may do the liquidation of the obligations. (Galogano, 2000, p. 715).

#### **1.6. Terminating Obligations through Release from Debt**

Debt release is the abolition of the obligation that has been reached, with the free will of the creditor. By means of a unilateral declaration and free will, he declares to the debtor that he would not demand any debt payment. The contractual practice of debt release recognizes these forms of release: Individual debt release, collective debt release, full debt release or partial debt release.

Regarding the effect of the obligations, debt release results in the extinguishment of the debtor's obligation, and exemption from the payment of the debt in the future. The LOR in detail regulates the abolition of the obligations in the case of general debt release. In this case, for all the claims recognized at the time of the conclusion of the contract, the debtor is relieved of the fulfilment of these obligations, except those which were not known at the time of their fulfilment, when the total debt release has occurred. (Dauti, N & Vokshi & Aliu, 2014, p. 387).

#### **1.7. Terminating Obligations through Novatio Renewal**

The termination of the obligation by means of novatio represents the expiration of the debtor's obligation within the debtor's and the creditor's agreement, to abolish the existing obligation in order to replace it with a new obligation, which is different in case or in base.

Since we are dealing with a modification of the agreement, we do not have to change the personality of the debtor. According to the general principle we are not concerned with extinction of the obligation, contractual relationships cannot exist if the debt and the claim are merged into one person, because as such we cannot owe it to ourselves.

Law, court decision or contract determine the legal conditions that are imposed on the expiration of the duties. In this case, there must exist the old obligation still in power, the creation of a new mandatory obligation, and the existence of the parties' intention to make renewal, as well as to distinguish the old obligation from the new one (Dauti, N & Vokshi & Aliu, 2014, p. 387).

The fulfilment of these conditions results in the termination of the obligations relationship, as the old obligation is replaced with the new obligation.

The expiration of the obligation with novatio represents the extinction of not only the principal but also the ancillary obligations, which have been linked to the old obligation (Cigoj, 1979, p. 247).

LOR, completely regulates the way of extinguishing the obligation through novatio. This way of regulating this form of extinction of old obligation through new obligation is presented in harmony with the principles of termination of obligations under contemporary laws (Kodi Civil Italian, 2014, p.562).

### **1.8. Merging Demand and Debt – Confounding**

Another way of extinguishing the obligations is their termination through confounding, which occurs in cases when the debt and the demand merge into one subject, and then we are dealing with confounding. In this case the debtor, in the same relationship, has the position of the creditor (Semini, 2004, p. 159).

Obligatory relationships are extinguished because you cannot owe to yourself. When debt and demand merge into one subject we are dealing with confounding.

The LOR in Article 334, paragraph 2, defines the cases when the termination of the obligation through compensation is not permitted. *When the bailer becomes a creditor, the principal debtor's liability is not extinguished. The obligation ends with confounding when the same person becomes both a debtor and a creditor. 2. When the bailer becomes a creditor, the principal debtor's liability shall not be extinguished.*

A special feature of extinguishing obligations with confusion depends on what thing we are dealing with. For applications that have generic items, the termination comes immediately. Whereas, when it comes to real estate, those which are registered in public books, in this case, it is not enough only the act of acceptance, but another act, the act of removal from the public register books, must be performed.

### **1.9. Terminating Obligations through Time Expiration**

The deadline occurs in order to bring into parties' attention that the obligations must be fulfilled within the deadline given by contract, by law or by a legal decision. Failure to do so within the statutory time limit implies the obligation to pay the interest rate. This way of termination of obligations represents a fixed time in civil vie in both cases, in succession as well as in perpetual obligations. LOR, specifically regulates this form of termination of obligations. (Dauti, 2012, p. 277)

## **2. Conclusions and Recommendations**

Strengthening law enforcement in Kosovo is one of the most important requirements for functional juridical order, human rights realization, and access to the justice system.

Above all, the need for a functioning judicial system and a consolidated legal framework in civilian relations is mandatory for Kosovo.

Initially, the lack of a consolidated code in civil relations prevented the development and growth of civil relations and resulted in a host of civil and generally controversial disputes.

Given the legal aspect, Kosovo has so far issued a number of legal acts regulating the sphere of civil relations in general as well as that obligation in particular. The LOR is a most necessary and most complex law that regulates the obligations in general, by becoming a law that is in harmony with advanced and modern laws in the field of obligation relationships.

The establishment of the relationship of obligations, in general, the greater number of them derives from the will of the parties and as such represent the main purpose of their creators to be fulfilled by their will. The voluntary way of extinguishing the obligations represents the main will and main purpose of the contractors, lawmakers, and the judicial system. As such it respects the principle of the relationship of obligations, that of respecting and fulfilling with the due diligence of the relationship of obligations.

LOR recognizes and regulates the main forms of termination of the obligations will, and as such, explicitly articulates all these ways of extinguishing obligation relationships.

Towards the regulation in this manner of obligation relationships also helps the institutionalisation of the notary service, which is assisting the judicial system in Kosovo by increasingly resolving disputes regarding the obligation relationships, in the best way and with no legal side effects for the contracting parties.

The main recommendation in this section is the harmonization of this law with the general principles of civil law, which we find in the current work on drafting the Civil Code. Since the part of the termination of obligations must be in line with the part of civil law.

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