CONSIDERATIONS WITH REGARD TO THE USUFRUCT OVER THE RIGHT OF VOTE AS GUARANTY APPLIED IN THE BUSINESS ACTIVITY

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Abstract

The aim of the present article is to scrutinize the usufruct over the right of vote related to a share as legal concept (from foregoing and current Romanian legislation and doctrine standpoint) and to highlight also the legal traits and the effective benefits provided as guaranty. To the same extent, the consolidation of the legal regime of this concept as guaranty is also the pursued objective.

Although the usufruct over the right of vote has been not considered as a valid guaranty, the companies from Romania (mostly the banks) used this mechanism as guaranty within the (sophisticated) lending transactions.

It is worthy to be mentioned that the right of vote may be related to a share belonging to a joint-stock company or to a social part belonging to a limited liability company.

The main scope of such guaranty is to strengthen the creditor's rights besides other established hard collaterals (mortgages over real estates, shares, receivables etc.). Thus, the creditor may influence the corporate will of a company (within the general shareholders meeting).

Moreover, the guaranty has to be set up in the form of a notarized deed (authenticated by a Notary Public) aiming to be considered a writ of execution and to enable the creditor to commence the foreclosure if needed.

Having in mind the above, this paper mainly regards: the content of the right of vote related to a share, security, social part, the applicability of the usufruct to the shares belonging to different companies (joint-stock companies listed or not listed to the Stock Exchange, other companies of capitals and persons), the relevant differences between the usufruct as dismemberment of the ownership right and the usufruct as guaranty, the significant aspects regarding the guaranty agreement, proposals to amend the legislation.

Keywords: *Usufruct, Joint-Stock Company, Limited Liability Company, Shares, Social Parts.*

1. Introduction

1.1. Which is the area/domain covered by the theme of the present study?

The present study aims to analyze the legal framework related to the usufruct over the right of vote related to a share, security, social part or part of interest belonging to a company and to provide arguments in order to consolidate the status of guaranty of this legal concept. In accordance with the Romanian New Civil Code, the usufruct is considered a dismemberment of the ownership right. On the basis of the usufruct right, the holder of the usufruct right has the exclusive use of the asset inclusively the right to enjoy the benefits deriving from the use of the asset ("to pick up the fruits").

Following this judgement, the usufruct over the right of vote tends to secure the reimbursement obligation of a society towards a creditor. Taking into consideration all these traits, the guaranties area (pertaining to the civil law) is the first covered area on one hand. On the other hand, such guaranty is applicable to the shares, securities etc., which form the share capital of the societies regarding the commercial activity (professional traders). Having in view the field of applicability we deem that the commercial law is the second covered area.

So there is a *mixtum compositum* between the civil traits of the guaranty and the commercial aspect regarding the applicability of this guaranty. Such mixture does not involve a contradiction in legal terms but it highlights a necessary complementarity.

I.2 Which are the importance of the study and the pursued objectives?

The envisaged importance of the study consists in:

(i) fortifying the legal status of the usufruct over the right of vote as a guaranty;

(ii) fostering the visibility and the utility of such guaranty both within the sophisticated transactions and ordinary (domestic) transactions;

(iii) providing ancillary legal arguments and a new perspective over such guaranty aiming to be extensively utilized by the legal professionals (practitioners, theoreticians, students) and companies (joint-stock companies, limited liabilities companies etc.) in current activity.

The pursued objectives of the study are:

(i) to consolidate the legal regime of this guaranty that may enhance the creditor's rights both when such guaranty is accompanied by a movable mortgage over the shares/social parts/securities and when it is not;

(ii) to emphasize the effective benefits;

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(iii) to analyze the form of the guaranty agreement, the relevant clauses/situations that may occur;

(iv) to depict the publicity formalities.

I.3. By which modality the answer to the aforesaid objectives shall be provided ?

The main envisaged modalities to reach the objectives are:

(i) researching the relevant civil and commercial doctrine prior to the new Civil Code;

(ii) researching the relevant provisions from the new Civil Code, the commercial legislation;

(iii) researching the relevant practices in the area.

The research will be made through comparative method, logical method and historical-teleological method.

1.4. The main directions of the doctrine in the area are as follows:

1.4.1. Prior to the entering into force of the new Civil Code (01.10.2011):

In conformity with the foregoing Article 124, 1st paragraph (abrogated through Law no.71/2011 commencing with 01.10.2011) from the Law no.31/1990 on companies, further amended and completed, the holder of the usufruct right over the shares held the vote within the ordinary shareholder's meetings whilst the legal owner of the shares kept the right of vote within the extraordinary shareholders meetings.

The above-mentioned Article 124, 1st paragraph was justified by the fact that the holder of the usufruct right was interested to collect the interests produced by the shares; therefore, he had the right to vote within the general assembly that decides on the distribution of the dividends and also on the administration current issues of the companies. Also, this article was applicable to the shares issued in dematerialized form (which are considered fungible assets).[1]

1.4.1.1. The said article regards the shares (specific to the joint-stock companies which are not listed to the Stock Exchange), the securities (specific to the joint-stock companies listed to the Stock Exchange) and the shares specific to a company limited by shares, pursuant to the Article 187 from Law no.31/1990. Based on the principles of the legal interpretation the same article was not applicable to the social parts related to the limited liability companies and to the parts of interest related to the companies of persons.

1.4.1.2. With regard to the form of the usufruct agreement, the doctrine did not extensively analyze such aspect.

We highlight that the legal practice in the area was to be signed notarized deeds (authenticated by a Notary Public) aiming to be considered a writ of execution.

1.4.1.3. With regard to the publicity formalities, the usufruct agreement was enrolled to the shareholder's registry so any creditor/person who justified an interest might investigate such registry. It was not allowed by the law to enroll the usufruct agreement with the Electronic Archive of Real Movable Securities.

1.4.2. After the entering into force of the new Civil Code (01.10.2011):

1.4.2.1. In accordance with the Article 741, 1st paragraph from the new Civil Code, the right of vote related to a share, other security, to an undivided quota from the ownership right or related to any other asset belongs to the holder of the usufruct right.

Nonetheless, the legal owner is the holder of the vote that has as effect the modification of the substance of the main asset such as the share capital or the co-owned asset or the modification regarding the destination of such asset or the cessation of the company, the reorganization or the cessation of the legal entity or of an enterprise, on case by case basis (Article 714, 2nd paragraph from the new Civil Code).

1.4.2.2. Concerning the form of the usufruct agreement and the publicity formalities we reiterate the considerations mentioned with the above points 1.4.1.2.and 1.4.1.3.

2. The usufruct. Concept

2.1. Overview of the legal provisions pursuant to the former Civil Code

2.1.1. First of all, the right of ownership was defined as a right held by a person based on which this person enjoys and disposes of an asset, but within the limits as provided by the law (Article 480 from the former Civil Code).

The doctrine considered that the ownership right is the most complete real right because it comprises all the 3 attributes: the possession, the use and the disposition that may be used by the holder in the entire plenitude of these attributes, being exclusive towards any other persons' rights over the same asset[2].

The conception of the prior Civil Code was in the direction to streamline and diversify the applicability of the ownership right by enabling the third parties (other than the legal owner) to utilize one or two of the attributes of the ownership right.

Thus the dismemberments of the ownership right are these real principal and derived rights over a third party's assets, opposable to anyone, inclusively to the owner, that are established or attained through their separation or through the

[1] Stanciu D.Carpenaru et.al., *The Law Of The Companies. Commentary On Articles* (Bucharest: C.H.Beck Publishing House, 3rd edition, 2006), 375.

[2] Corneliu Barsan,Maria Gaita, Mona Maria Gaita, *Civil Law.The Real Rights* (Iasi:The European Institute, 1997), 153.

limitation of one attributes from the legal content of the ownership right.[3]

2.1.2 Following the provisions of the Article 517 from the foregoing Civil Code, the usufruct was defined as a persons' right to enjoy the asset owned by a third party as the owner himself having the duty to conserve the substance of the asset. The usufruct may regard movable or immovable assets (Article 520 from the former Civil Code). So the essence of the usufruct was the right to use an asset and to enjoy the benefits produced by the assets.

At the cessation of the usufruct by any reason, the asset must be restituted to the legal owner (Article 557 and the following from the former Civil Code).

2.1.3. The usufruct is applicable only to the assets that form the object of the private property.

Taking into consideration that the assets that form the object of the public property may be not alienated (as provided by the Article 136, 4th paragraph from the Constitution of Romania), such assets may not represent the object of the usufruct right.

2.2. Overview of the legal provisions pursuant to the new Civil Code

2.2.1. In conformity with the Article 703 from the new Civil Code, the usufruct is the right to use other persons' asset and to enjoy the benefits produced by the asset, having the obligation to conserve the substance of the asset.

Following the conception of the former legislation, the usufruct may regard the movable or the immovable goods, corporal or incorporeal, inclusively a patrimonial mass, a factual universality or an undivided quota of them, in conformity with the Article 706 from the new Civil Code.

Regarding the incorporeal assets, the novelty consists in the fact that the usufruct may be established over receivables, capital, lifelong annuity, fond of commerce or right of vote.

2.2.2. The usufruct is essentially temporary and the holder of the usufruct right is undertaken to restitute the assets at the cessation of the usufruct.

2.2.3. In lack of a contrary stipulation, the holder of the usufruct right has the exclusive use of the asset, inclusively the right to enjoy the benefits produced by the assets, based on the Article 709 from the new Civil Code.

2.2.4. The usufruct may be not transmitted *mortis causa*, but the assignment of the usufruct is allowed only by legal acts signed between alive persons.[3]

2.3. It has to be mentioned that the Law 31/1990 comprised a legal provision (Article 124, 1st paragraph) based on which the usufruct over the shares granted to the holder of the usufruct the right to vote within the ordinary shareholders meeting whilst the legal owner of the shares had the right to vote within the extraordinary shareholders meeting. This article was abrogated through Law no.71/2011 starting with 01/10/2011 the argument being that the usufruct right is distinctively regulated by the new Civil Code.

2.4. In comparison with the former Article 124,1st paragraph from the Law no. 31/1990 on companies that comprised a a limitation meaning the usufruct right was applicable only to the shares pertaining to a joint stock company and limited by shares company, the Article 741, 1st paragraph from the new Civil Code stipulates that the right of vote related to a share, other security, to an undivided quota from the ownership **right or related to any other asset belongs to the holder of the usufruct right.**

So we consider that there is an extension of the applicability of the aforesaid article meaning the right of vote may regard the social part (related to a limited liability company) a part of interest (related to the societies of persons). We have primarily in view the legal wording **(right of vote) related to any other asset that includes the social parts and the parts of interests.**

Furthermore, the usufruct right may be established over the shares, securities, regardless their form (materialized or dematerialized).

The holder of the usufruct right and the legal owner of the shares may take part both in the extraordinary general shareholders meeting and in ordinary general shareholders meeting *observing the object of the resolution that shall be taken*; this is in contrast with the former legal provision based on which the holder of the usufruct right was enabled to participate *only in the extraordinary general shareholders meeting* and the legal owner was allowed to participate *only in the ordinary general shareholders meeting.* As effect, in the light of the new Civil Code, the holder of the usufruct right may vote within the ordinary general shareholders meeting (on issues like the approval of the financial situations, appointment and dismissal of the administrators) and within the extraordinary general shareholders meeting (on issues like the change of the object of activity, relocation of the registered office etc.). The legal owner may vote within the *ordinary general shareholders meeting* (on issues like closing of some units of the company if it generates a reorganization) and within the

[3] Gabriel Boroi, Carla Alexandra Anghelescu, Bogdan Nazat, *Course Of Civil Law.The Principal Real Rights In Conformity With The New Civil Code* (Bucharest: Hamangiu Publishing House, 2013), 142.

extraordinary general shareholders meeting (on issues like merge or splitting-up of the company, reduction or rise of the share capital and on other issues that are directly linked to the substance, destination of the shares).[4]

3. The right of vote. Concept. Applications. Legal nature

3.1. Concept

The right of vote is one of the shareholders' rights pursuant to the shares held by each shareholder with the share capital.[5]

3.2. Applications

3.2.1. With regard to the joint stock companies, besides the right of vote, the shareholder have the right to take part in the general shareholders meeting, the right to information, the right to dividends and the right over the part derived from the company winding-up.[6]

Based on the Article 101 from the Law no.31/1990, any paid share entitles the shareholder to one right of vote within the general shareholders meeting except for otherwise had been stipulated within the constitutive deed of the company; the constitutive deed may limit the number of the votes for the shareholders who hold more than one share;also, the right of vote may be suspended for the shareholders who hadn't paid the due owed contributions.

3.2.2. The shares of a joint stock company are of 3 types:

a) the nominative shares that identify the holder (Article 91 from the Law no.31/1990).

A nominative share will mainly comprise the following information in this respect, based on the Article 93 3rd paragraph form the Law no.31/1990: the name, the forename, the personal identification number, the domicile related to the shareholder individual and also the identification data for a shareholder legal entity (the name, the registered office, sole registration code). Such shares may be issued in material form (on paper support) or in dematerialized from when they will be enrolled with the shareholders registry.[6]

b) the shares to bearer does not identify the bearer so the owner is the persons who effectively holds the share.

c) the preferential shares. In accordance with the Article 95 from the Law no.31/1990, a joint-stock company may issue preferential shares with priority dividend without the right of vote that grant to the owner: (i) the right to a priority dividend charged over the distributed benefit of the financial exercise, prior to any other charging; (ii) the right recognized to the shareholders holding ordinary shares, inclusively the right to attend the general meeting *except for the right of vote. In the absence of the right of vote, the establishment of the usufruct as guaranty is not possible.*

3.2.3. The companies listed on the Stock Exchange issue securities that means, in compliance with the Article 2, po.33 from the Law no. 297/2004 on the capital market: (i) the shares issued by the companies and other equivalent securities negotiated on the capital market; (ii) the bonds and other receivable titles, inclusively state bonds, negotiated on the capital market; (iii) any other currently negotiated titles which grants the right to purchase the respective securities through underwriting or exchange, enabling a settlement in cash except for the payment instruments.

3.3. Representation issues. Regarding *the joint-stock companies*, the shareholders may take part and vote within the general assembly by representation based on a power of attorney granted for the respective general assembly. The members of the Board of Administrators, the managers, the members of the Directorate and of the Supervision Council or the officers may not represent the shareholders under the sanction of the absolute nullity, if without the vote of the aforesaid persons the required majority would not have been attained (Article 125 from the Law no.31/1990).

3.3.1. Regarding the *companies listed on the Stock Exchange*, based on the Article 243, 6^1 and 6^2 paragraphs from the Law no.297/2004, the representation of the shareholders within the general shareholders meeting may be done through other persons than other shareholders, on basis of special or general empowerment; the special empowerment may be granted to any person for a sole representation within the general shareholders meeting and it comprises specific instructions to exert the right of vote; the general empowerment may be granted for a period of 3 years enabling the proxy to vote on all the issues on the agenda of any companies mentioned in the empowerment inclusively with regard to the acts of disposition,

[4] Stanciu.D.Carpenaru, Gheorghe Piperea, Sorin David, *The Law Of The Companies. Commentary On Article* (Bucharest: C.H.Beck Publishing House, 5th edition, 2015), 409-410.

[5] Stanciu D.Carpenaru, *Treatise Of Romanian Commercial Law* (Bucharest: Universul Juridic Publishing House, 4th edition, updated, 2014), 323.

[6] Stanciu D.Carpenaru, *Treatise Of Romanian Commercial Law* (Bucharest: Universul Juridic Publishing House, 4th edition, updated, 2014), 322-324.

under the condition that the empowerment to be granted by the shareholder- as a client- to an intermediary as defined by the law or to a lawyer.

3.4. Concerning the social parts belonging to the societies of persons the following aspects must be emphasized:

(i) although the parts of interests are strongly linked to the person of the holder, the assignment of the parts of interest is expressly permitted by the Articles 87 and 90 from the Law no.31/1990, if it is stipulated by the constitutive deed;

(ii) the possibility to contract a bank loan by a societies of persons may be not excluded. Consequently, the bank may require to be established a usufruct over the right of vote. So, the conclusion is that the usufruct over the right of vote related to the parts of interests may be established if it is stipulated within the constitutive deed or all the shareholders grant their unanimous consent in this respect.

3.5. With respect to the social parts belonging to the limited liability, there are the following commentaries: (i) although the social parts are strongly linked to the person of the holder, the assignment of the social parts is expressly permitted between the shareholders of the same company and also to the third parties by the Article 202 from the Law no.31/1990. For the last situation, the prerequisite is to exist a resolution of the shareholders representing ¾ from the social capital;

(ii) the possibility to contract a bank loan by a limited liability company may be not excluded.

Consequently, the bank may require to be established a usufruct over the right of vote. So, the conclusion is that the usufruct over the right of vote related to the social parts may be established based on the resolution of the general shareholders meeting, following the legal provisions in force and the constitutive deed.

3.6. Legal nature

3.6.1. The juridical doctrine prior to the entering into force of the new Civil Code did not extensively investigate the legal nature of the usufruct over the shares and also the guaranty traits of this concept if it related to a repayment undertaking.[7]

3.6.2. Some authors consider that the usufruct over a security is no longer a real right because neither the right from it is originated is not a real right.

Subsequently, the usufruct over a receivable is an ordinary right to use the receivable.[8]

3.6.3. In compliance with other opinion expressed within the current doctrine, the usufruct is a dismemberment of the ownership right. If the right of vote regards operations of administration and conservation of the asset object of the usufruct, the right of vote will belong to the holder of the usufruct; if the right of vote regards operations of disposition over the asset object of the usufruct, the right of vote will be held by the legal owner.[9]

3.6.4. Although the usufruct over the shares (prior to the former Civil Code) was not legally considered a guaranty, the same affirmation may be done in connection to the usufruct over the right of vote based on the new Civil Code.

3.6.5. Regarding the usufruct over the right of vote that secures a repayment obligation towards a creditor (mostly banks), we consider that the usufruct agreement may be notarized by a Public Notary, aiming to become a writ of execution in conformity with the Article 100 from the Law no.36/1995 on the Notaries Public and notarial activity, further amended and completed.

3.6.6. On a basis of the current legislation we may not exclude the possibility to validly sign a usufruct agreement and subsequently to conclude a movable mortgage over the usufruct over the right of vote that is writ of execution, based on the Articles 2347, 1st paragraph, 2389, letter l) and 2431 from the new Civil Code.

But this solution may be bureaucratic because of the two documents that must be signed and most likely it does not reach the requirement of celerity specific to the business milieu.

3.6.7. On the other hand, the solution to be notarized the usufruct agreement is safer and faster because:

(i) the whole content of the agreement shall be previously verified by the Notary Public from the legality standpoint;

(ii) the consent of the signatory parties shall be checked beforehand by the Notary Public;

(iii) any document notarized by a Notary Public that ascertains a certain and exigible

[7] Stanciu D.Carpenaru, *Treatise of Romanian Commercial Law* (Bucharest: All Beck Publishing House, 3rd edition, 2001), 307.

[8] Gabriel Boroi, Carla Alexandra Anghelescu, Bogdan Nazat, *Course Of Civil Law.The Principal Real Rights In Conformity With The New Civil Code* (Bucharest: Hamangiu Publishing House, 2013), 142.

[9] Corneliu Barsan, *Civil Law. The Principal Real Rights Based On The New Civil Code* (Bucharest: Hamangiu Publishing House, 2013), 280-281.

receivable is writ of execution at the maturity date of the receivable;

(iv) the date of the document is out of any doubt;

(v) the notarized agreement will be enrolled with the registry of shareholders-for priority rank issues- so any diligent lender will previously verify this registry We stress that between a guaranty enrolled with the Electronic Archive and the usufruct agreement enrolled with the shareholders registry, the first guaranty shall have priority;

(v) on a basis of the wit of execution, the creditor has the prerogatives to commence the foreclosure if an event of default shall occur.

3.6.8. Having in mind the above, there are many arguments to consider the usufruct agreement as a guaranty except for the publicity formalities within a database aiming to assure the opposability towards any third party. Thus, the legislation regarding the Electronic Archive must be amended in this respect aiming to enable the registration of the usufruct agreement with the Electronic Archive.

4. Relevant clauses/operations that must be included with the usufruct agreement

4.1. The usufruct over the right of vote shall become effective when an event of default- as stipulated by the credit agreement/legal document that ascertains the debt-shall occur. In such a case, the creditor will automatically be entitled to attend the general shareholder meeting and to effectively exert the right of vote.

4.2. The right of vote shall be exerted by the holder of the usufruct in respect to the operations of administration and conservation. The right of vote concerning the operations of disposition belongs to the legal owner of the shares. The distribution of the right of vote in other conditions that these stipulated with the Article 741, 1st and 2nd paragraphs from the new Civil Code is not opposable to the third parties, except for the case when the third parties had expressly acknowledged of these conditions (Article 741, 3rd paragraph from the new Civil Code).

4.3. Regarding the usufruct over the right of vote-as guaranty- the usufruct agreement is advisable to comprise the following clauses:

(i) the holder of the usufruct right undertakes to respect the destination of the asset (the right of vote), except for the case when a fostering of the asset value is assured or the interests of the legal owner are not prejudiced, as provided by the Article 723 from the new Civil Code. It means mean that the holder of the usufruct will exert the right of vote observing the legal provisions in force, the stipulations of the constitutive deed but also his interests as a creditor (disregarding if the interests of the legal owner may be prejudiced), in conformity with the applicable legislation. Such right may be exerted in good faith;

(ii) based on the Article 714 from the new Civil Code, the possibility to be ceded-gratuitously or onerously- the right of usufruct by the holder of the usufruct right; the holder of the usufruct is liable towards the legal owner for the obligations arisen before the assignment of the usufruct; until the notification of the assignment, the holder of the usufruct and the assignee are jointly liable towards the legal owner. After the notification of the assignment, the assignee is liable towards the legal owner in respect to the obligations arisen after the notification. In such a case, the legal provisions regarding the surety are applicable to the holder of the usufruct.

We deem that the onerous assignment of the usufruct may be justified when the creditor has a fast interest to work-out the guaranty.

(iii) based on the Article 725 from the new Civil Code, the holder of the usufruct is responsible to indemnify the legal owner for any prejudice caused by the improper use of the right of vote. This clause is applicable to the situations when the potential prejudices are not linked to the exerting of the right of vote in consideration of defending the creditor's rights;

(iv) based on the Article 726 from the new Civil Code, the holder of the usufruct may be obliged to establish a surety aiming to secure the fulfillment of its obligations. We reasonably consider that such a clause is unsuitable taking into consideration the usufruct as guaranty;

(v) in compliance with the Article 733 from the new Civil Code, the holder of the usufruct bears all the charges and the outlays ensued by the litigations regarding the use of the asset, the picking-up of the fruits and the cashing of the incomes.

We consider that such obligation may be transferred to the legal owner;

(vi) the holder of the usufruct is bound to immediately inform the legal owner in respect to any usurpation of the main asset and to any contestation regarding the ownership right under the sanction to pay indemnifications (Article 734 from the new Civil Code);

(vii) the holder of the usufruct may rent the asset object of the usufruct, based on the Article 715 from the new Civil Code We consider that such clause is unsuitable to be stipulated within the usufruct agreement (as guaranty);

(viii) based on the Article 707 from the new Civil Code, the usufruct is extended over all the accessories (i.e. dividends) of the asset that forms the object of the usufruct;

(ix) the expenses and the charges related to the ownership are incumbent to the legal owner (Article 735 from the new Civil Code).

When such costs are born by the holder of the usufruct, the legal owner is bound to reimburse such costs; when there is an onerous usufruct, the legal owner is obliged to pay the legal interest.

5. Conclusions

5.1. The main directions and the obtained results

5.1.1. The main directions approaches in this study are:

(i) presentation of the relevant differences between the foregoing legal regime regarding the usufruct over the shares and the current juridical regime concerning the usufruct over the right of vote;

(ii) analysis of the legal nature of the usufruct over the right of vote, the main applications of the usufruct over the right of vote and providing legal arguments that the usufruct over the right of vote is applicable to the social parts (specific to a limited liability company) and to the parts of interest (specific to the societies of persons);

(iii) analysis of the form of the usufruct agreement as guaranty;

(iv) the main clauses that must be inserted with the usufruct agreement as guaranty.

5.1.2. The results obtained are:

(i) the usufruct over the right of vote is applicable to a wider range of shares (shares belonging to the joint stock-companies, social parts and parts of interest);

(ii) the notarized form of the usufruct agreement as guaranty confers the quality of the writ of execution that enable the creditor to start the foreclosure. The notarized form better responses to the needs of the companies within the business activity;

References:

(iii) there are many arguments to consider the usufruct over the right of vote as guaranty, except for the opposability towards the third parties.

Given the existing legal framework, such guaranty may be enrolled in the shareholders' register.

Although the shareholders register is legally required only for joint-stock companies and limited liability companies, there is no legal banning to exist such a registry also for the societies of persons.

Such guaranty may be not registered with the Electronic Archive so the priority rank towards the third parties is not wholly assured;

(iv) such guaranty may be used both in sophisticated transactions and in domestic transactions regardless if the creditor is a bank or a different person.

5.2. Envisaged impact of the obtained results

5.2.1. The main novelty consists in the fact that the usufruct over the right of vote may be applicable to a broader categories of companies meaning joint stock-companies, limited liability companies and societies of persons.

5.2.2. The practitioners and theoreticians in cooperation with the business environment should gather their efforts in order to strengthen the status of guaranty of the usufruct over the right of vote and to make lobby aiming to be adjusted the current legislation in respect to the priority rank issues as mentioned with the po.5.1.2. above.

5.3. In respect to the trends of the legal research in the area, the main recommendations are:

(i) to be amended the Civil Code aiming to be expressly regulated the status of the usufruct over the right of vote as a special guaranty applicable to he shares, social parts and parts of interests regardless their form of issuance (materialized or dematerialized).

Subsequently, the same law shall stipulate that the usufruct over the right of vote may be validly concluded through an act under private signature which is writ of execution when it secures a repayment undertaking;

(ii) to be amended the Civil Code with the scope to regulate that the usufruct agreement –when it is concluded as a guaranty- may be enrolled within the shareholders register and within the Electronic Archive, the last registration assuring the priority rank towards any third party (creditors).

- Corneliu Barsan, Maria Gaita, Mona Maria Pivniceru, *Civil Law, The Real Rights* (Iasi: The European Institute, 1997), 153;
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