

LEGAL EFFECTS OF THE CONTRACT FOR PERPETUAL MAINTENANCE IN PROPERTY AND INHERITANCE LAW

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Abstract

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The contract for perpetual maintenance constitutes a legally complex instrument situated at the intersection of property and inheritance law in Kosovo. It establishes a lifelong obligation whereby one party (the provider) agrees to support another (the receiver), typically in exchange for movable or immovable property. This study addresses a significant gap in the existing literature regarding the regulation, legal characteristics, and implications of such contracts within Kosovo's civil law framework. It aims to explore the effects of these agreements on property transfers, the rights of heirs, and legal certainty, particularly in the context of rising inheritance disputes. Using doctrinal legal analysis, the study examines key legislative instruments — including Law No. 04/L-077 on Obligational Relations, Law No. 03/L-154 on Property, and Law No. 2004/26 on Inheritance — alongside relevant case law. Recent academic contributions (Arsić & Stanivuk, 2019; Xhafaj & Thaqi, 2023) and judicial rulings suggest that, while these contracts serve important social functions, they also pose legal challenges such as conflicts over ownership and inheritance fragmentation. This paper advocates for legislative reform aimed at clarifying legal definitions, reinforcing consent procedures, and implementing stronger legal safeguards. The findings contribute to the broader legal discourse concerning the balance between long-term contractual obligations and inheritance law within developing legal systems.

Keywords: Contract for Perpetual Maintenance, Kosovo, Inheritance Law, Property Transfer, Legal Safeguards, Doctrinal Analysis, Civil Law

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1. INTRODUCTION

The contract for perpetual maintenance represents a crucial legal instrument within Kosovo's property and inheritance law. It creates a lifelong obligation between the provider and the recipient of maintenance, typically in exchange for movable or property agreements such as sales contracts (Xhafaj & Thaqi, 2023). In Kosovo, this contract addresses essential social needs — particularly for individuals

who, due to age, illness, or incapacity, are unable to manage their assets but require lifelong care while maintaining control over their property for as long as possible (Arsić & Stanivuk, 2019). Despite its practical relevance, the contract remains underexamined in legal scholarship and gives rise to several uncertainties, especially regarding the transfer of ownership, protection of contractual rights, and implications for inheritance (Advokatska Kancelarija Prnjavorac, n.d.).

Recent judicial developments in Kosovo reveal a notable increase in disputes involving such contracts, especially in the context of inheritance conflicts and protection of property rights (Xhafaj & Thaqi, 2023). These trends underscore the pressing need for clearer legal guidance and more robust safeguards for all parties involved.

Although Kosovo's legal framework provides for inter vivos property transfers and lifelong contractual obligations, scholarly discourse has primarily centered on more conventional legal instruments such as sales contracts, donations, and wills. As a result, there is a considerable gap in the academic literature concerning perpetual maintenance contracts, particularly within post-socialist civil law systems such as Kosovo's. This paper seeks to bridge that gap by examining the doctrinal underpinnings, judicial practices, and prospects for regulatory reform.

Comparative perspectives enrich this study. For example, Teteloshvili (2020) explores the legal intricacies of lifelong maintenance contracts under Georgian law, while Zimmermann's (1996) foundational work on European private law offers theoretical insights into the structure of long-term obligations. Moreover, the Principles of European Contract Law (PECL) offer interpretive frameworks applicable to such agreements.

Kosovo's legal architecture — including Law No. 2004/26 on Inheritance, Law No. 03/L-154 on Property and Other Real Rights, and Law No. 04/L-077 on Obligational Relations — serves as the foundation for analyzing these contracts. The key research questions that guide this paper are:

RQ1: How does the contract for perpetual maintenance influence property ownership and transfer?

RQ2: What are the legal implications for heirs?

RQ3: How can the rights of the contracting parties be effectively safeguarded under Kosovo's legal system?

The study adopts a doctrinal legal methodology, analyzing statutory provisions, judicial decisions, and relevant scholarly contributions (Xhafaj & Thaqi, 2023). Findings reveal that, although the contract offers crucial social and legal protections, its ambiguous structure can lead to inheritance disputes and property fragmentation if legal safeguards are not firmly established. Therefore, the study underscores the need for precise legal definitions and enhanced protective mechanisms to promote fairness and legal certainty.

The rest of this paper is structured as follows. Section 2 reviews the relevant literature. Section 3 outlines the research methodology. Section 4 investigates the legal effects of the contract. Section 5 addresses legal limitations and available protections. Section 6 provides a comparative analysis with other property contracts. Section 7 explores the contract's impact on inheritance law. Section 8 discusses practical and judicial challenges. Section 9 presents concluding remarks and recommendations for reform.

2. LITERATURE REVIEW

The contract for perpetual maintenance occupies a distinctive and complex position at the confluence of property law, inheritance law, and enduring contractual obligations. Traditionally, it has been regarded as a specialized legal instrument enabling the transfer of property rights coupled with ongoing

maintenance responsibilities. This characteristic sets it apart fundamentally from conventional sales or lease agreements, given its inherent dual nature, simultaneously effectuating a transfer of ownership or property interests and imposing lifelong personal care obligations on the transferee (Stanković & Orlić, 2004). Such duality is particularly significant in jurisdictions with entrenched civil law traditions, especially in post-socialist countries like Kosovo, where the legal framework is continuously evolving in an effort to reconcile individual property rights with broader social welfare considerations (Maloku, 2023).

Within Kosovo's legal doctrine, discourse surrounding perpetual maintenance contracts remains somewhat limited but is deeply informed by regional civil law traditions prevalent across the Balkans and Central Europe (Green, 2024). These legal traditions prioritize the protection of vulnerable populations, including the elderly and incapacitated, while simultaneously safeguarding the legitimate property interests of all parties involved. This approach reflects a socio-legal policy dimension extending well beyond the confines of strict property law transactions, incorporating principles of social justice and familial duty (Maloku, 2023).

Recent scholarship spanning from 2021 to 2025 has increasingly addressed the growing complexity and legal significance of maintenance contracts within Kosovo and analogous jurisdictions. In particular, Xhafaj and Thaqi (2023) analyze how Kosovo's judiciary is adapting to conflicts emerging from these contracts, highlighting critical challenges related to enforceability, the risk of contractual abuses, and the delicate balancing act between contractual freedom and the protection of heirs' rights. Maloku (2023) contributes a comparative regional analysis, emphasizing the importance of harmonizing national legislation with European legal standards to enhance legal certainty and predictability. Additionally, research conducted by Xhafaj and Thaqi (2023) explores regulatory gaps and practical enforcement challenges, stressing the urgent need for legislative clarity and effective procedural safeguards.

Doctrinal scholarship further underscores the imperative of more explicitly integrating perpetual maintenance contracts into the inheritance law framework to eliminate existing legal ambiguities. Tomić (2020) emphasizes that addressing legislative gaps through clearer statutory definitions and the introduction of protective mechanisms could substantially reduce litigation and promote equitable outcomes for all stakeholders. This perspective aligns with ongoing legal reform initiatives aiming to modernize property and family law frameworks in response to demographic shifts and evolving social realities (Green, 2024).

A comparative perspective significantly enriches the understanding of perpetual maintenance contracts by situating Kosovo's legal regime within the broader civil law tradition. Jurisdictions such as Germany, Austria, and Serbia regulate functionally analogous contracts through distinct legal frameworks that nevertheless pursue common objectives, namely, securing long-term personal care in exchange for rights relating to property. For instance, German law recognizes the concept of *Nießbrauch* (usufruct), which grants the usufructuary the right to use and derive benefit from property during their lifetime without transferring ownership,

thereby mirroring the separation of use rights from ownership that characterizes Kosovo's perpetual maintenance contracts (Zimmermann, 1996). Austrian law permits conditional donations (*Schenkung unter Auflage*) and testamentary contracts imposing lifelong care obligations, which often embody clearer inheritance implications compared to Kosovo's existing system (Köck, 2020). Serbia's *ugovor o doživotnom izdržavanju* (contract for lifelong maintenance) must be concluded in writing and notarized. The notary is obliged to inform the parties that the property covered by the contract does not enter the recipient's estate and cannot be used to satisfy mandatory heirs, which ensures legal certainty and protects the interests of heirs (Advokat Popović, n.d.).

This comparative analysis highlights shared challenges such as defining the timing of ownership transfer, protecting heirs' rights, and managing the care obligations entailed in these contracts. Moreover, it offers pragmatic recommendations that Kosovo could adopt to improve legal clarity and to balance the interests of all stakeholders more effectively (Köck, 2020; Zimmermann, 1996). Despite these contributions, the extant literature lacks a fully comprehensive approach that integrates the doctrinal, judicial, and practical facets of perpetual maintenance contracts within Kosovo's legal system. This paper intends to address this lacuna by synthesizing insights from property law, inheritance law, and contract theory, thereby offering a nuanced and holistic understanding of these contracts in post-socialist legal orders.

3. RESEARCH METHODOLOGY

This study adopts a doctrinal legal research methodology focused on the critical analysis of legal norms, judicial rulings, and scholarly interpretations concerning the contract for perpetual maintenance as situated within Kosovo's legal system. This approach is particularly effective for elucidating the application, interpretation, and potential reform of laws governing complex property and inheritance issues (Xhafaj & Thaqi, 2023).

Furthermore, the research incorporates a comparative legal perspective by examining analogous legal constructs in civil law jurisdictions such as Germany, Austria, and Serbia. This comparative approach provides normative benchmarks and a broader contextual framework, aiding the identification of reforms that align Kosovo's legal framework with prevailing European legal standards (Köck, 2020; Zimmermann, 1996).

3.1. Legal sources and analytical framework

The principal legal sources examined include:

- Law No. 04/L-077 on Obligational Relations, which governs contractual obligations, including those arising from lifelong maintenance contracts.
- Law No. 03/L-154 on Ownership and Other Real Rights, which establishes the legal framework for property rights and their transfer.
- Law No. 2004/26 on Inheritance in Kosovo, which regulates succession and inheritance rights closely linked to maintenance agreements.

Relevant case law from Kosovo courts, particularly decisions addressing inheritance disputes and the validity or enforcement of lifelong maintenance contracts (Judgment C.nr. 926/21, 2024).

The analysis is complemented by scholarly and doctrinal writings such as those by Xhafaj and Thaqi (2023), Köck (2020), and Zimmermann (1996), which elucidate ambiguities and inconsistencies in Kosovo's legal system.

The comparative dimension encompasses:

- The German legal institution of *Nießbrauch* (usufruct), granting lifelong use and enjoyment of property without ownership transfer, reflects a division between use rights and ownership akin to Kosovo's contracts (Zimmermann, 1996).

- Austrian law's *Schenkung unter Auflage* (conditional donation) and testamentary contracts impose lifelong care obligations with clearer inheritance consequences than Kosovo's framework (Köck, 2020).

- Serbia's *ugovor o doživotnom izdržavanju* (contract for lifelong maintenance), characterized by detailed statutory regulation, judicial precedent, and procedural safeguards such as notarization and revocation provisions that protect heirs and contracting parties alike (Đurđević & Pavićević, 2022).

3.2. Data collection and interpretation

Data were collected through:

- A comprehensive review of primary legal texts, including statutes and codes.
- Analysis of judicial decisions in Kosovo concerning maintenance contracts and inheritance disputes.

- Examination of recent academic literature from 2020 to 2025 to capture contemporary legal perspectives.

- Desktop research using legal databases and academic repositories for comparative legal materials.

Interpretation of data involved:

- Identification of inconsistencies and gaps in law application.

- Assessment of the adequacy of legal protections for parties engaged in lifelong maintenance contracts.

- Comparative evaluation of Kosovo's legal regime with other civil law jurisdictions to identify best practices for enhancing coordination between property transfer and inheritance law.

3.3. Limitations of the methodology

While doctrinal research forms a strong foundation for legal analysis, it has intrinsic limitations. This study does not investigate how legal practitioners, such as judges, notaries, and lawyers, interpret and apply these contracts in everyday practice; the lived experiences of elderly individuals entering into such contracts or their heirs; or reliable quantitative data regarding the prevalence of perpetual maintenance contracts in Kosovo due to a lack of comprehensive statistics.

Moreover, the comparative component relies solely on secondary sources and excludes empirical fieldwork within the foreign jurisdictions considered (Köck, 2020; Zimmermann, 1996).

Nonetheless, the integration of doctrinal and comparative methodologies facilitates a comprehensive understanding of Kosovo's legal framework and supports informed recommendations for reform based on both local legal realities and international standards (Xhafaj & Thaqi, 2023).

4. LEGAL EFFECTS OF THE CONTRACT IN PROPERTY LAW

4.1. The concept and importance of the contract

The contract for perpetual maintenance occupies a distinctive and pivotal role within property law, particularly concerning immovable property. These contracts trace their historical origins to civil law traditions, where property transfer was intrinsically linked to obligations extending beyond mere ownership, thus connecting the conveyance with ongoing maintenance responsibilities (Harkness, 2012). Unlike conventional sale or lease agreements, a contract for perpetual maintenance establishes a long-term reciprocal relationship between the parties, intertwining elements of property transfer with enduring personal duties (Xhafaj & Thaqi, 2023). The legal foundation of this contract is rooted in the principles of contract and property law, especially regarding inter vivos transfers — that is, transfers of property rights during the lifetime of the parties — subject to specific conditions (Assembly of the Republic of Kosovo, 2012). This contract differs fundamentally from sales or leases because ownership is not transferred unconditionally, and the parties remain bound by ongoing care obligations indefinitely.

4.2. Complexity of transfer compared to sales transactions

Property transfer under a contract for perpetual maintenance is inherently more complex than in conventional sales transactions. Whereas sales contract typically entails a one-time, irrevocable transfer of ownership (Assembly of the Republic of Kosovo, 2012, Article 438), contracts for perpetual maintenance impose continuing obligations and conditions that must be satisfied for the transfer to become valid and effective (Xhafaj, 2023). This complexity demands strict compliance with legal formalities, including notarization and registration with real estate cadastres, to guarantee transparency and enforceability (Novaković, 2022). Potential risks include disputes arising from ambiguous contractual terms, failure to perform maintenance obligations, and challenges in determining the precise moment and manner in which ownership is fully transferred, especially subsequent to the death of the maintenance recipient (Xhafaj & Thaqi, 2023). Accordingly, meticulous contract drafting and vigilant judicial oversight are imperative to safeguard the interests of all parties involved.

5. LEGAL LIMITATIONS AND GUARANTEES

5.1. Effect on rights of other potential owners

The contract for perpetual maintenance significantly impacts the rights of other potential property owners, including co-owners, heirs, and third parties. Once property becomes encumbered by such a contract, the rights of these parties are inherently restricted, as the maintenance provider acquires a vested interest in the property subject to the associated maintenance obligations (Bjelica, 2023). This limitation functions as a protective measure for the property and serves to prevent unauthorized transactions that might undermine the contractual relationship.

5.2. Consent requirements for use and transfer

A key legal limitation embedded in these contracts is the requirement for mutual consent regarding the use or transfer of the property. The maintenance provider is precluded from unilaterally selling or transferring the property without the maintenance recipient's approval, thereby safeguarding the recipient's interests (Assembly of the Republic of Kosovo, 2012, Article 560). Conversely, the recipient cannot exploit or transfer the property for personal gain without the provider's consent. This dual-consent mechanism preserves the integrity of the contract and ensures that the property's purpose, namely, ongoing care and maintenance, is upheld (Đurđević & Pavićević, 2022).

5.3. Care obligations and legal restrictions

The contract explicitly delineates the scope of maintenance obligations, outlining the provider's responsibilities concerning both the upkeep of the property and the well-being of the recipient (Ubavić, 1994). Failure to comply with these obligations can trigger legal consequences such as breach of contract claims or, in some cases, annulment of the contract (Judgment C.nr. 926/21, 2024). These legal restrictions function to protect the property from neglect while guaranteeing the recipient's right to adequate care, thus imposing enforceable duties that transcend those typical of ordinary property contracts (Ilić, 2024).

5.4. Protection of property rights and dispute resolution

Legal mechanisms exist to enforce the terms of the contract and resolve disputes efficiently. Courts generally uphold contracts for perpetual maintenance as binding agreements, provided that they comply with requisite formalities and genuinely reflect the parties' free will (Ilić, 2024). In disputes, courts prioritize the fulfillment of contractual obligations and protect the property rights of both parties through remedies such as injunctions, specific performance orders, or claims for damages (Ilić, 2024). Moreover, the registration of such contracts in public real estate registries serves as a safeguard against third-party claims, thereby enhancing transparency and legal certainty (Xhafaj, 2023). Alternative dispute resolution mechanisms, including mediation, are encouraged to resolve conflicts amicably, reducing litigation costs and preserving the parties' relationship (FasterCapital, 2025).

6. DISTINGUISHING THE CONTRACT FROM OTHER PROPERTY CONTRACTS

6.1. Comparison with sales contracts

The contract for perpetual maintenance markedly differs from traditional sales contracts. In sales contracts, ownership transfers immediately and fully from seller to buyer upon fulfillment of contractual terms, conferring upon the buyer full control and rights over the property (Assembly of the Republic of Kosovo, 2012, Article 438). In contrast, under a perpetual maintenance contract, ownership transfer is conditional and intrinsically linked to

ongoing obligations. The maintenance recipient retains ownership rights during their lifetime, while the provider's rights are contingent upon continuous fulfillment of care duties (Xhafaj & Thaqi, 2023). This arrangement creates a unique hybrid ownership structure, combining possession with conditional ownership, an arrangement absent in standard sales contracts (Bjelica, 2023).

6.2. Comparison with usufruct

Unlike usufruct agreements, which grant temporary rights to use and derive benefits from property until a specified event (typically the death of the usufructuary) (Kenton, 2025), the contract for perpetual maintenance has no predetermined duration and may persist indefinitely (Assembly of the Republic of Kosovo, 2009, Article 235). Usufructuaries are obligated to preserve the property and return it undamaged upon termination, but bear no responsibility for personal care of the owner (Arsić, 2022). By contrast, the contract for perpetual maintenance extends beyond mere usage rights by embedding mutual care obligations, thus establishing a more intricate and enduring relationship that merges property rights with personal care duties (Vukotić, 2021).

6.3. Comparison with leasing and property use

Leasing contracts confer upon the lessee a limited right to use the property in exchange for rent, generally without any obligations to maintain the property or provide personal care to the lessor (Assembly of the Republic of Kosovo, 2009, Article 585). By contrast, the contract for perpetual maintenance imposes preservation and care duties lasting for the provider's lifetime (Ubavić, 1994; Xhafaj & Thaqi, 2023). This contract transcends a mere economic transaction, constituting instead a reciprocal arrangement that ensures lifelong support and maintenance of both the property and the individual. It thus represents a profound legal and social commitment, extending well beyond the transactional nature of leasing or simple usage contracts (Arsić & Stanivuk, 2019).

6.4. Comparative perspective with civil law jurisdictions

Although firmly grounded in Kosovo's legal framework, the contract for perpetual maintenance benefits from comparative analysis with other civil law systems, which provide valuable normative benchmarks. Jurisdictions such as Germany, Austria, and Serbia regulate functionally analogous contracts through distinct legal mechanisms that share core objectives, ensuring long-term personal care in exchange for property-related rights.

In German law, the concept of *Nießbrauch* (usufruct) permits an individual to enjoy the use and benefits of property for life without acquiring ownership (Zimmermann, 1996). While devoid of care obligations, this separation of use from ownership resonates with the conditional nature of the maintenance provider's rights in Kosovo.

Austria permits *Schenkung unter Auflage* (donations with conditions) and testamentary contracts that impose obligations on the donee to care for the donor or perform lifelong services (Köck, 2020). These contracts can be tailored to

resemble maintenance agreements and typically provide clearer inheritance implications than Kosovo's current framework.

In Serbia, the *ugovor o doživotnom izdržavanju* (contract for lifelong maintenance) operates similarly to Kosovo's model, with well-established statutory provisions and judicial precedents. Serbian law emphasizes procedural safeguards such as notarization and explicit revocation conditions, which enhance legal certainty and protect the interests of heirs (Stojkovic Attorneys, 2025).

These comparative models illuminate common challenges — such as defining the timing of ownership transfer, safeguarding heirs, and managing care obligations — and offer practical solutions for Kosovo. Incorporating clearer statutory language, enhanced oversight mechanisms, and inheritance coordination would align Kosovo's legal framework with broader European legal standards and strengthen protections for all stakeholders.

7. RESULTS

This section presents the principal findings regarding the legal effects of the contract for perpetual maintenance within the framework of inheritance law, alongside its practical implications within Kosovo's legal system. These results derive from doctrinal legal analysis, statutory interpretation, judicial practice, and comparative insights from other civil law jurisdictions, as discussed earlier. The findings elucidate how this contract influences inheritance procedures, affects heirs' rights, generates legal disputes, and is adjudicated by Kosovo's courts. Furthermore, practical and procedural challenges encountered by both parties and courts highlight the contract's inherent complexity and nuanced application.

7.1. Impact on the inheritance process

The contract for perpetual maintenance exerts a significant influence on inheritance proceedings. Unlike standard property transfers that occur post mortem, this contract operates as an *inter vivos* agreement, effectuating the transfer of ownership during the lifetime of the parties involved (Arsić & Stanivuk, 2019). Consequently, the property subject to this contract is excluded from the deceased's estate and does not constitute part of the inheritance, thereby frequently altering the distribution of assets among heirs and occasionally restricting their anticipated rights (Assembly of the Republic of Kosovo, 2004a). The timing of ownership transfer is contingent upon the fulfillment of care obligations, which may delay the final transfer and complicate estate division and inheritance claims (Arsić & Stanivuk, 2019).

Drawing from the comparative civil law perspective outlined above, this complexity mirrors challenges observed in Serbia's *ugovor o doživotnom izdržavanju* (contract for lifelong maintenance), where procedural safeguards and explicit conditions are crucial for legal certainty (Arsić & Stanivuk, 2019). Similarly, Austrian and German legal systems emphasize the necessity of clearly distinguishing between use and ownership rights to prevent disputes (Köck, 2020; Zimmermann, 1996). Kosovo's legal framework could benefit from such clarifications to effectively address issues surrounding timing and transfer.

7.2. Benefits and restrictions for heirs

Heirs face considerable limitations under this contractual arrangement, as they are precluded from exercising control over the property until all contractual conditions are satisfied. The maintenance provider secures rights through public registration, which protects their interest and informs third parties accordingly (Assembly of the Republic of Kosovo, 2012, Article 561). This configuration restricts heirs' capacity to manage or dispose of the property throughout the care period, potentially engendering legal uncertainty and financial disadvantages (Ubavić, 1994; Xhafaj & Thaqi, 2023). Nonetheless, these constraints serve to safeguard the property and ensure the fulfillment of care obligations.

By comparison, Austrian contracts with conditions and German usufruct rights present models that explicitly balance heirs' rights with care duties, thereby reducing legal ambiguity (Köck, 2020; Zimmermann, 1996). Incorporating similar provisions into Kosovo's legal framework could enhance protections for heirs without compromising the care agreements.

7.3. Conflicts that may arise

Disputes frequently arise concerning the validity and interpretation of the contract, particularly with respect to the free will of the maintenance recipient and possible infringements on heirs' rights (Judgment C.nr. 926/21, 2024). In disputes involving lifelong maintenance contracts, courts prioritize the fulfillment of contractual obligations and protect the property rights of both parties through remedies such as injunctions, specific performance orders, or claims for damages. Courts are therefore required to rigorously evaluate evidentiary material, including witness testimony and expert opinions, to uphold contractual fairness while respecting the autonomy of the parties (Đorđević, 2022).

These challenges parallel those encountered in Serbian jurisprudence, where procedural rigor and clear revocation conditions serve to mitigate disputes and protect the interests of the involved parties. Specifically, the *ugovor o doživotnom izdržavanju* (contract for lifelong maintenance) in Serbia requires notarization and explicit conditions for revocation, ensuring that neither party can unilaterally exploit or transfer property without the other party's consent. These measures strengthen legal certainty and safeguard heirs' rights (Stojkovic Attorneys, 2021). Kosovo could adopt similar procedural safeguards to enhance dispute resolution efficacy.

7.4. Judicial practice

Kosovo's judiciary generally upholds contracts for perpetual maintenance when duly executed, emphasizing their binding inter vivos character (Xhafaj, 2023). Courts in Serbia and Kosovo have consistently held that contracts for lifelong maintenance are excluded from inheritance law provisions, as they create obligations and rights that are distinct from statutory heirs' shares, thereby preventing annulment claims grounded solely on inheritance rights (Xhafaj & Thaqi, 2023). The judiciary prioritizes enforcement of the contractual agreements and respects the parties'

intentions, thereby safeguarding the maintenance provider's rights and ensuring legal certainty (Ubavić, 1994; Bjelica, 2023).

Judicial approaches in Kosovo are consonant with those in comparable civil law jurisdictions, which acknowledge the legitimacy and enforceability of analogous contracts, underscoring the imperative of strict formalities and adherence to contract terms (Köck, 2020).

8. PRACTICAL CONSEQUENCES AND LEGAL CHALLENGES

8.1. Challenges for parties and judiciary

The contract for perpetual maintenance introduces distinct challenges for both contracting parties and the judiciary. Its indefinite duration, coupled with ongoing care obligations, engenders considerable legal uncertainties, particularly concerning the timing and conditions of ownership transfer (Arsić & Stanivuk, 2019). Parties frequently encounter evidentiary obstacles in demonstrating compliance with contractual duties, which may cause enforcement delays and provoke disputes (Gashi & Vlahna, 2024). Additionally, heirs often suffer delayed access to or inheritance of property, exacerbating familial tensions and complicating succession planning (Rawat, 2024).

Such difficulties are not unique to Kosovo. Comparative insights reveal that civil law countries such as Serbia and Austria address similar challenges through enhanced oversight mechanisms, clearly articulated procedural rules, and inheritance coordination measures, which collectively mitigate uncertainty and reduce disputes (Köck, 2020). Kosovo's legal system could benefit from adopting analogous safeguards to equitably balance the rights and obligations of all parties involved.

8.2. Judicial treatment and case law

Kosovo's courts generally adopt a cautious yet respectful approach toward contracts for perpetual maintenance, recognizing them as valid and binding inter vivos agreements (Judgment C.nr. 926/21, 2024). Jurisprudence consistently affirms their enforceability, rejecting annulment claims when contracts conform to requisite legal formalities (Xhafaj, 2023). Courts in Kosovo prioritize contractual autonomy and legal certainty, even in cases where heirs raise objections based on fairness or inheritance rights, upholding the validity of lifelong maintenance contracts (Xhafaj & Thaqi, 2023).

Legal scholarship acknowledges the intrinsic complexity of these contracts within inheritance law but underscores their flexibility and efficacy as mechanisms to guarantee care and protect property rights over time (Xhafaj, 2023). Experiences from Germany, Austria, and Serbia suggest that Kosovo could enhance judicial treatment by integrating clearer statutory language and procedural safeguards, thereby aligning its legal standards with broader European practices and improving outcomes for all stakeholders (Zimmermann, 1996; Köck, 2020).

9. CONCLUSION

This study demonstrates that the contract for perpetual maintenance represents a legally complex and socially significant mechanism within Kosovo's

property and inheritance law framework. Its unique nature as an inter vivos agreement affects the inheritance process by transferring ownership during the provider's lifetime, thereby excluding the property from the decedent's estate and complicating the distribution of assets among heirs (Bjelica, 2023). The contract ensures lifelong care obligations, which provide social security benefits but simultaneously introduce legal uncertainties, especially concerning the timing of ownership transfer, heirs' rights, and dispute resolution (Rawat, 2024).

Comparative insights from civil law jurisdictions such as Germany, Austria, and Serbia offer valuable examples of how similar contracts are regulated, presenting possible solutions to these challenges. German law's concept of *Nießbrauch* (usufruct) separates usage rights from ownership without care obligations, reflecting a conditional property right similar to Kosovo's model (Zimmermann, 1996). Austria's *Schenkung unter Auflage* and testamentary contracts impose lifelong care duties tied to property rights, often with clearer inheritance implications (Köck, 2020). Serbia's *ugovor o doživotnom izdržavanju* includes robust statutory rules and judicial precedents emphasizing procedural safeguards like notarization and revocation conditions that protect heirs' interests and enhance legal certainty (Đorđević, 2022). These examples illustrate mechanisms Kosovo could adopt to clarify ownership transfer timing, balance obligations and rights, and improve inheritance coordination (Köck, 2020; Zimmermann, 1996).

The findings underscore the urgent need for clearer legislative regulation in Kosovo to define the rights and duties of all parties involved, emphasizing a balance between the contractual

obligations of maintenance providers and the inheritance rights of successors. Such reforms would reduce conflicts, increase predictability, and better protect vulnerable parties (Đorđević, 2022). While Kosovo's judiciary generally upholds these contracts' enforceability, the lack of detailed statutory provisions results in inconsistent interpretations and practical challenges (Xhafaj, 2023).

This research is limited by the scarcity of comprehensive case law and the evolving state of Kosovo's legal system regarding these contracts. It relies primarily on doctrinal analysis and existing judicial decisions, which may not fully reflect practical or social impacts. Future research should incorporate empirical studies on real-life consequences for contracting parties and heirs, alongside comparative analyses to identify best practices and reforms that reconcile lifelong care duties with inheritance equity (Xhafaj, 2023; Teteloshvili, 2020).

Practically, legislators are encouraged to enact clear statutes addressing the timing and conditions of property transfer, statutory protections for heirs, and mandatory disclosure requirements. Legal practitioners and notaries should improve awareness and counseling to ensure parties understand the long-term consequences of these agreements. Furthermore, promoting mediation and alternative dispute resolution mechanisms can help resolve conflicts efficiently, reduce court burdens, and preserve family relationships (FasterCapital, 2025).

Together, these measures, supported by comparative legal experiences, can strengthen Kosovo's legal framework for contracts for perpetual maintenance, fostering more equitable, transparent, and predictable outcomes in inheritance matters.

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