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THE INTRODUCTION AND CONCEPT OF TRUST-LIKE LEGAL DEVICES IN SOME CENTRAL AND EASTERN EUROPEAN COUNTRIES

In accordance with international trends, legislators in Central and Eastern European countries have tried to create a legal construction similar to the trust in recent decades. In many respects, these legal solutions show significant similarities with the legal institution under the common law without adopting the legal substance of equity. The purpose of this study is to provide a brief overview of the extent to which the trust-like legal institutions introduced in the seven countries of the region, such as Russia, Ukraine, Lithuania, Georgia, the Czech Republic, Romania and Hungary, are similar to the Anglo-Saxon trust, as well as the differences in their regulation.

Keywords

trust, settlor, trustee, beneficiary, asset partitioning, tracing, asset management

The common law trust as a legal institution is a unique concept.¹ The trust as a legal institution evolved in England, and quickly gained influence in Commonwealth countries. As a consequence, trust law is largely consistent and unified by its case law in North America, Australia, New Zealand, Hong Kong, etc. In civil law countries, by contrast, trust schemes have been introduced on-demand as economies of civil law countries find the need, albeit with similar legislation and functionality as applied in common law countries. In civil law countries and states where English economic and political influence was strong, the regulation of trusts was inevitable. The trust has been instituted, however, with specific legislation in mixed civil legal environments, such as Louisiana, Québec, South Africa and even in some Central and South American countries (Panama, Mexico, Chile, etc.). By comparison, legal systems in Europe based on Roman law traditions have either conceived their own approach or completely rejected the institution of the trust as did Germany, Austria, Spain, Portugal, etc. Some established customary practices without any legislative background of the fiduciary ownership transfer, such as Switzerland; some made use of private foundations, as in Austria and Belgium, while others, such as Liechtenstein, recognized the benefits of the trust and similar institutions, and established such systems in the early 20th century. Ultimately, the economic demand for trust systems is obvious, particularly on the basis of its functionalities and legal regulations. In Asia, following in Japan's footsteps, the People's Republic of China, South Korea and Taiwan each established legal backgrounds for property management in the late 20th century. In the early 21st century, legislation in European civil law systems followed suit: France, Luxembourg, Russia, Lithuania, Georgia, San Marino, Czech Republic, Romania, and Hungary all set up legal backgrounds for asset management.²

I would like to give a short introduction below to the legislation of the trust-like legal devices applied in seven Eastern European countries: Russia, Ukraine, Lithuania, Georgia, Czech Republic, Romania and Hungary. The second part of the study provides a comparison of the most important features of regulation in these legal regimes.³

1 István SÁNDOR: *On the Emergence and Development of the Trust Legal Institution*. Journal on European History of Law. Vol. 7/2016 No. 2. 80 ff.

2 In connection with the regulation of the Treuhand see István SÁNDOR: *Fiduciary Property management and the Trust. Historical and Comparative Law Analysis*. Budapest, HVG-ORAC Lap- és Könyvkiadó Kft., 2015. p. 291 ff.

3 The texts of the civil codes of the covered countries use different terminologies for the trust-like legal devices and for the parties in the relationship. I will generally use Anglo-Saxon terms, such as trust, settlor, trustee, beneficiary and trust property, but of course this does not mean that the examined legal institutions are equal to the trust.

I. Legislative background

1. Russia

The regulation concerning trust-like legal device was promulgated on 24 December 1993.⁴ Pursuant to the regulation, a contract is concluded between the settlor of the trust (*uchreditel' trasta*) and the trustee (*doveritel'nyi sobstvennik*); the settlor transfers the property to the trustee, who manages the property for the benefit of the beneficiary. Property transferred in this manner was granted protection in the event of the trustee's insolvency. This arrangement was drafted specifically for privatisation purposes; the state was the settlor, and the federal state treasury was the beneficiary. The trustees were institutions, e.g. banks, investment funds and insurance companies, which managed the shares of the converted state-owned companies for a fee.⁵ The new Russian civil code substantially amended this legal instrument.

The first part of the Russian civil code entered into force on 1 January 1995.⁶ Pursuant to Art. 209(4), legal title may be transferred to someone else for the purpose of asset management (*doveritel'noe upravlenie*).⁷ The second part of the Russian civil code entered into force on 1 March 1996. Chapter 53 regulates asset.⁸ Pursuant to Art. 1012 of the Russian civil code, under the agreement between the parties, one party (settlor) transfers the property to the other party (trustee) for a fixed period, and the other party undertakes to manage the property for the benefit of the settlor or a beneficiary designated by him. The transfer of property does not extend to the transfer of legal title to the property.⁹ Thus, under the new regulation, the settlor retains legal title to the trust property, while the trustee only acquires the right to manage the property. The trustee carries out his duties for remuneration, but is not entitled to profits from the trust property.

4 Elpseth REID: *The Law of Trusts in Russia*. Review of Central and East European Law 24 (1998). p. 45 ff.

5 The federal contracting agency, Roskontrakt, became the largest asset management organisation. Elpseth REID 1998. p. 47.

6 Sobranie zakonodatel'stva RF 1994 No. 32 item 3301.

7 The earlier term "trust owner" was replaced with "trust manager" (*doveritel'nyi upravliaiushchii*), which is associated with agency, representation. Elpseth REID 1998: p. 48.

8 Sobranie zakonodatel'stva RF 1996 No. 5 item 410. See also Irina GVBESIANI: *French "Fiducie" and Russian "ДОВЕРИТЕЛЬНОЕ УПРАВЛЕНИЕ ИМУЩЕСТВОМ"* (Terminological Peculiarities). European Scientific Journal December 2013 (Special) edition Vol. 4. p. 115 ff.

9 Benevolenskaya, Zlata E.: *Trust Management as a Legal Form of Managing State Property in Russia*. Review of Central and East European Law 35 (2010). p. 68 ff. Hamza draws a parallel between this arrangement and regulation in Louisiana. Gábor HAMZA: *Origine e sviluppo degli ordinamenti giusprivatistici moderni in base alla tradizione del diritto romano*. Santiago de Compostella, Andavira editora, 2013. 494.

This contractual arrangement does not reach the level of the Anglo-Saxon trust, but it is more than a simple agency or mandate. Although the settlor may terminate the contract at any time, the trustee holds exclusive rights to manage the property. On the other hand, the trustee requires the prior written consent of the settlor for important decisions concerning the property, such as the cessation of the business association through the exercise of voting rights attached to shares included in the property, modification of its capital, decision on the amendment to the deed of foundation. The trustee must manage the property separately from his own property, and keep it on a separate account. This arrangement is mainly applied in Russia for the operation of investment funds and pension funds.¹⁰ The adoption of the Anglo-Saxon version of the trust was opposed by Russian jurists mainly on the grounds that it would have infringed the requirement of the indivisibility of ownership, and the law of equity (*spravedlivost'*) is similarly unknown in Russian law.¹¹

2. Ukraine

The private law of Ukraine is traditionally based on Roman law, with a strong influence of the French civil code.¹² The new civil code enacted on 1 January 2004 was strongly influenced by the German civil code (BGB). The new civil code regulates property management in Book V (The Right of Obligation), Section III (Separate Types of Obligations), Sub-section 1 (Contractual Obligations), Chapter 70 (Property Management).

According to the regulation, under a written asset management agreement the settlor transfers the property to the manager (trustee) to be managed for a specific period of time. The trustee manages the property in the interest of the settlor or a third person, a beneficiary.¹³ The trustee is entitled to remuneration for his activity. The property can be almost anything; there is a restriction only in case of monetary funds and certain securities, which are allowed only when the legal relationship is established by law. The trustee can only be an enterprise and the property management agreement must be registered by the state. The managed property must be handled separately from the assets of the trustee.

¹⁰ Elspeth REID 1998: p. 54 ff.

¹¹ Benevolenskaya notes that divided ownership had not been unknown in the context of Russia's legal history. Zlata E. BENEVOLENSKAYA: *Prospects for Trust in Russia: The Prospective as Seen from 2010 and 2011 Draft Amendments to Russian Civil Code*. Review of Central and Eastern European Law 37/1, (2012), p. 41 ff.

¹² Gábor HAMZA: *Entstehung und Entwicklung der modernen Privatrechtsordnungen und die römischrechtliche Tradition*. Budapest, Eötvös Universitätsverlag, 2009. 557.

¹³ Art. 1029(1) of the Ukrainian civil code.

3. Lithuania

In the earlier civil code of Lithuania, in force from 1964, property management was regulated in relation to public property. The new civil code was enacted on 17 May of 1994 and came into force on 1 January 2000¹⁴; it introduced property management right for the private sector as well. The regulation was essentially only renamed, but the substance of the legal arrangement remained the same.¹⁵ The property management right is an in rem right which is regulated in Book Four (Material Law), Part I (Things), Chapter VI (Right of Trust) of the Lithuanian civil code.

The trustee right is an independent in rem right, with which the trustee is allowed to exercise practically the same rights as the owner.

4. Georgia

Art. 724–729 of the Georgian civil code of 1997 regulate the legal institution that is similar to the trust (*sakutrebis mindoba*), which was shaped upon the influence of Anglo-Saxon law and the Roman law *fiducia*. Property management is established by a written trust contract (*sakutrebis mindobis khelshekruleba*), under which the trustee (*mindobili mesakutre*) is obliged to manage the property for the benefit of the settlor (*sakutrebis mimndobi*); thus, this is not a tripartite relationship. Pursuant to Art. 725(1), the trustee manages the property in his own name, at the cost and risk of the settlor. Profits from the property are also due to the settlor. As a general rule, the property management contract is gratuitous, but the parties may derogate from this rule. The trustee is liable toward third parties for duties relating to the trust property.¹⁶ Provisions relating to agency provide the legal framework for the property management contract.

5. Romania

In Romania, civil code No 511/2009 (amended by No 71/2011.), Art. 773–791 introduced the *fiducia*, a property management arrangement similar to the trust. The Romanian concept of the *fiducia* shows notable similarities to the French

¹⁴ Lietuvos Respublikos civilinis kodeksas, LR CK.

¹⁵ Justas SAKAVIČIUS: *Problematics of Property Trust Law in Lithuania*. Vilnius, Mykolo Romerio Universitetas, 2011. p. 3.

¹⁶ For detailed analysis of regulation, see Irina GVELESIANI: *The Luxembourgish "Fiducie" and the Georgian "Trust" (Terminological Peculiarities)*. *Mediterranean Journal of Social Sciences* Vol. 4. No 11 (2013). p. 126.

law of the *fiducie*.¹⁷ The *fiducia* may be established by law or a notarised contract. Hence, it may not be established by testament. Pursuant to Art. 773 of the Romanian civil code, one or more settlors (*constitutori*) transfer legal title or other rights to one or more trustees (*fiduciari*), who manage it for a specific purpose or for the benefit of the beneficiaries (*beneficiari*).¹⁸ The trust property constitutes property separate from the trustee's own property. Under Romanian regulations, the position of trustee may only be filled by a credit institution, investment company, insurance or reinsurance company, notary or lawyer.¹⁹

The establishment of the *fiducia* must be reported to the competent tax authority within one month. The *fiducia* becomes effective vis-à-vis third parties once the deed of foundation has been registered (Electronic Archive of Security Interests in Personal Property). If the trust property includes real property, it must be registered in the land register. The maximum duration of the *fiducia* is 33 years.

6. Czech Republic

The civil code of the Czech Republic (No. 89/2012.) in force as of 1 January 2014 also regulates property management. The regulation of the trust was introduced in a form of a trust fund (*svěřenský fond*). Legislators applied the concept of property without owner for drafting the regulation similar to the civil code of Québec. Only trust funds set out in a statute, which is a public instrument, are valid. The trust may be established by contract or testament. The trust may be declared for commercial, investment, private purposes or for public benefit.

Upon establishment of the trust, the settlor no longer holds legal title to the trust property, which will become property without owner, to be managed by the trustee for the benefit of the beneficiaries.²⁰ Despite the fact that the property of the trust fund does not have a legal owner, the trustee is listed in some public regis-

17 In connection with the French regulation see François BARRIÈRE: *The French fiducie, or the chaotic awakening of a sleeping beauty*. In Lionel Smith (ed.): *Re-imagining the trusts: trusts in civil law*. Cambridge, Cambridge University Press, 2012. p. 227 ff. Jan SZEMJONNECK: *Die fiducie im französischen Code civil*. *Zeitschrift für Europäisches Privatrecht* 3 (2010). p. 574 ff.

18 See Luminița TULEAȘCĂ: *The Concept of the Trust in Romanian Law*. *Romanian Economic and Business Review* Vol. 6. No. 2. 157 ff.

19 See Irina GVELESIANI: *Romanian "Fiducia" and Georgian "Trust" (Major Terminological Similarities and Differences)*. *Challenges of Knowledge Society* 2013/3. p. 286 ff.

20 Czech civil code, sec. 1448(3). Detailed analysis of the Czech regulation see Kateřina RONOVSÁ: *'Svěřenský fond' (Trust Fund): A Daring New Legal Transplant in Czech Law*. In Sue Farran – James Gallen – Jennifer Hendry – Christa Rautenbach (ed.): *The Diffusion of Law: The Movement of Laws and Norms Around the World*. Farnham, Ashgate, 2015, 203 ff. Kateřina RONOVSÁ – Petr LAVICKÝ: *Foundations and trust funds in the Czech Republic after the recodification of Civil Law: a step forward?* *Trust & Trustees* 2015/6. 46 ff.

tries. Accordingly, the purpose of the property and its status as a "trust fund" must be indicated in legal relationships relating to the property. Both the settlor and the beneficiary may exercise control over the trust property. In addition, the court may also order the trustee to take appropriate actions.

The trustee is appointed by the settlor, otherwise by the court. The trustee is required to accept the appointment, otherwise the trust cannot be established. The settlor also designates the beneficiary, otherwise the settlor is deemed to be the beneficiary.

7. Hungary

The Hungarian Civil Code regulates the fiduciary asset management contract (*bizalmi vagyonkezelési szerződés*) in Chapter XLII, within the scope of agency-type contracts.²¹ The regulation was drawn up on the basis of the model of the trust in English law and that of the *Treuhand* in German law. The trust was under contract law, emphasising, however, its application of the legal instrument of the transfer of ownership, based on the trust-like model. Under the rules of the new Hungarian Civil Code, the fiduciary asset management (trust) contract is an in personam legal instrument that implicitly carries substantial in rem effects. The new Hungarian Civil Code sets out a contractual arrangement; its validity is bound to a written contract. The regulation is of a general scope; details are regulated in two separate pieces of legislation: Act XV of 2014 on Trustees and the Regulation of Their Activity, and Government Decree No 87/2014 (III. 20.) on certain rules concerning the financial security of fiduciary property management undertakings. As a general rule, regulation is dispositive; contracting is principally for consideration.

²¹ In connection with the Hungarian regulation see especially István SÁNDOR: *Property and Trust Law in Hungary*. Alphen aan den Rijn, Kluwer Law International, Second edition, 2021, 208 ff.

II. Comparison of the legal regulations

The most important features of the trust have been chosen for comparison. These viewpoints do not cover all the elements of trust regulation, but give a comprehensive picture of the similarities and differences in the rules of the researched countries.

1. The legal structure

The legal structure of the trust-like devices in the seven reviewed countries is quite different. In Russia and Ukraine, this legal arrangement can be characterised as a mandate or agency contract.²² In Georgia it is similar to an agency contract, but the trustee holds the property in his own name.²³ In the Czech Republic the regulation resembles a separate and independent ownership of property, like the regulation in Québec.²⁴ The trust property is neither the property of the settlor, nor that of the trustee; the trust property must be vested in its own name on account (must be designated as a "Trust Fund"). The trust can be private or public. In Romania the French *fiducie* served as the model, therefore it is a contractual relationship with some property features because the trustee becomes owner of the managed assets.²⁵ In Lithuania the right of property management is an in rem right, which is quite peculiar because this right can exist alongside ownership.²⁶ In Hungary two legal acts are required: firstly, a contract, and secondly, the transfer of property.²⁷ But we have to emphasise that the Hungarian model has additional rules in connection with asset partitioning and tracing.

On the basis of the comparison, we may conclude that none of these countries adapted entirely the Anglo-Saxon trust. In Russia, Ukraine and Georgia the structure basically rests on the contract of mandate and agency. Romania followed the French regulation, and the Czech Republic adopted the Québec model. The Hungarian regulation is also based on contract law but property law regulations are also applied. The Lithuanian solution is unique because the right of asset management is an in rem right.

22 Sec. 1012 of the Russian civil code. We should note that the Russian civil code regulates the right of economic management, where the manager can be a state or municipal enterprise (Art. 294), and also the right of operation management (Art. 296.), which is possible for institutes, but these are non-profit legal entities (Art. 120). These rights are in rem rights, but the establishment of these is restricted to the public and non-profit sector. Sec. 1029(1) of the Ukrainian civil code.

23 Art. 725 of the Georgian civil code.

24 Art. 1448(3) of the Czech civil code.

25 Art. 773 of the Romanian civil code.

26 Art. 4.106 of the Lithuanian civil code.

27 Art. 6:310 of the Hungarian civil code.

2. Creation

Fiduciary property management in Russia requires a written trust contract, similarly to the Georgian,²⁸ and Ukraine law.²⁹ In the Czech Republic a testament or a contract in the form of a public instrument needed for the establishment of the trust relationship.³⁰ In Romania a public instrument is also required, but there the trust may be established by law as well.³¹ In Hungary a contract, a testament or a unilateral declaration may result a trust. A contract and a testament can only be made in written form, while the unilateral act is bound to a document authorized by a notary.³² In Lithuania the right of asset management may be established by law, administrative act, contract, will or court judgment.³³

Upon comparison we may conclude that the written form is a requirement in all countries. The Russian, Ukrainian, Georgian and Romanian regulation allows only a contractual form, while the Czech, Lithuanian and Hungarian one permits a testament as well. The Hungarian regulation is unique in that the trust can be formed by a unilateral act as well. A public instrument is generally required in Romania, Ukraine and in the Czech Republic, but only in the case of the unilateral act under Hungarian law. The Russian and Georgian regulation does not have special requirements beyond the written form. Of course, in all countries there can be specific formal requirements if the transfer of the trust property must be registered with a public registry. Lithuania provides the widest ranging options to establish the right of trust not only in the form of a contract or a will, but this legal arrangement may be established by law, administrative act or court judgment as well.

3. Registration of the trust

In Russia, Georgia and the Czech Republic, there are no special regulations relating to the registration of the trust. In Romania the trust agreement must be registered by the tax authority competent at the seat of the trustee within one month after its conclusion, and also with the national registry of the fiduciary management.³⁴ Registration is important for fiscal reasons and for validity as well. In Ukraine the property management agreement is also required to be regis-

28 Art. 1017 of the Russian and Art. 727 of the Georgian civil code.

29 Art. 1031(1) – (2) of the Ukrainian civil code.

30 Art. 1452(3) of the Czech civil code.

31 Art. 774(1) – (2) of the Romanian civil code.

32 Art. 6:310(2) and 6:329(1) of the Hungarian civil code.

33 Art. 4.108. of the Lithuanian civil code.

34 Art. 780 – 781 of the Romanian civil code.

tered.³⁵ In Hungary, regulation is twofold. In the case of a profit-orientated trustee company, the trustee must be licensed and registered by the National Bank of Hungary. In the case of a non-profit-orientated (ad hoc) trust, the contract must be registered by the National Bank of Hungary.³⁶ We have to emphasise that the omission of the registration of the trust contract does not affect the legal validity of the contract, but it may cause fiscal disadvantages.

We may observe that the registration of the trustee and/or the trust deed is becoming a strengthening trend, usually in connection with the transfer of ownership. This may be a reason why registration is not required at all in Russia and Georgia, while some kind of registration is needed in Ukraine, Romania and in Hungary. In Romania the omission of registration results in the nullity of the trust. In Hungary this does not affect the validity of the trust, but has other legal consequences, although the trustee and the beneficiary must pay the relevant tax and stamp duty for the transfer.

4. Ownership (title)

In Russia and Ukraine, the legal title remains with the settlor, which is a mandatory rule, and the trustee only has the right to manage the property³⁷. In Georgia the trustee manages the property in his/her own name, but the settlor remains the ultimate owner.³⁸ In the Czech Republic neither the settlor, nor the trustee or the beneficiary are owners of the property; the property does not have an owner. If registration of the property is needed, it is registered in the name of the trustee, but as trust property.³⁹ In Romania the trustee becomes the owner, but must keep the property separate.⁴⁰ In Lithuania ownership remains with the settlor and the trustee acquires a special in rem right, the right of trust.⁴¹ In Hungary the trustee must acquire full ownership, title – this is a mandatory rule.⁴²

With regard to this aspect of regulation, four different structures exist in Eastern Europe.⁴³ In Russia and Ukraine the settlor remains the legal owner of the trust

35 Art. 1031(2) of the Ukrainian civil code.

36 Art. 11(1) and 19 of Act XV of 2014 on Trustees and the Regulation of Their Activity.

37 Art. 1012(1) of the Russian civil code, Art. 1029(1) of the Ukrainian civil code.

38 The English translation mentions that "the trustor transfers property to the trustee, who holds and manages it in accordance with the interest of the trustor" (Art. 724) and "the trustee shall be bound to manage the property held in trust in his own name, but at the risk of the trustor"; Art. 725 of the Georgian civil code.

39 Art. 1450(1) of the Czech civil code.

40 Art. 773 of the Romanian civil code.

41 Art. 6:953(2) of the Lithuanian civil code.

42 Art. 6:310(1) of the Hungarian civil code.

43 See in more details István SÁNDOR: *Different Types of Trust from an Ownership Aspect*. European

property. These models resemble the simple contractual legal relationship more than the English trust. In Lithuania a special *in rem* right is established in relation to property management, where the trustor remains the owner. This regulation is very similar to the structure of the Dutch *bewind*, but in this case, the owner is the trustee, not the beneficiary. The Czech regulation follows the Québec model, which means that the trustee formally holds the legal title, but the trust property is an independent property without owner. In Hungary and Romania the trustee is legally the owner of the property, but this property is separated from his/her own property – it is like a sub-property.

5. Requirements of the trustee

In Georgia no special requirements apply to the trustee. In Russia, according to law, the trustee (trust administrator) can only be a businessman or commercial company, and only exceptionally may it not be a businessman or non-profit making organization.⁴⁴ A state body or local government or a sole enterprise unitarian enterprise are not allowed to be a trustee. The position of a trustee may only be filled by a businessman or a commercial company. Natural persons may manage property only in the case of trusts established by law (e.g. guardianship, custodianship). The trustee is required to indicate his legal status, e.g. with the abbreviation "D U", on contracts relating to the trust property. In Ukraine the trustee can only be an enterprise. A state body and local government body can be a manager only if so stipulated by law. The beneficiary is not permitted to be the sole manager.⁴⁵ In Lithuania the trustee may be a natural or a legal person as well, and special legal regulation may be enacted to exclude persons from the position of trustee. The trustee may not be the sole beneficiary at the same time.⁴⁶ In the Czech Republic the trustee can be a natural person. The civil code stipulates that a legal person can be the trustee only if it is permitted by law. The trustee may also be appointed by the court. The settlor may also be a trustee, but not the sole one.⁴⁷ In Romania only financial institutions, investment companies, financial investment companies, insurance companies, notaries and lawyers can be trustees.⁴⁸ In Hungary specific conditions must be met if the trustee is a professional trustee. If the trust relationship is not profit-orientated, any private person of legal age and

Review of Private Law, Vol. 24 Issue 6 (2016). 1189 ff.

44 If the trustee can be someone else under law, even in this case an institution is not allowed to be the trustee. Art. 1015 (1) – (2) of the Russian civil code.

45 Art. 1033(1) – (3) of the Ukrainian civil code.

46 Art. 6.958(1) – (3) of the Lithuanian civil code.

47 Art. 1453(1) – (2) of the Czech civil code.

48 Art. 776(1) – (3) of the Romanian civil code.

any legal person can be a trustee. The Trustee Act distinguishes professional and ad hoc trustee. If somebody is a trustee in more than one trust then the trustee must hold the license of the National Bank of Hungary prior to the start of such activity.⁴⁹ The undertaking must be a limited liability company or private limited company with a registered office in the territory of Hungary, or the branch – registered in Hungary – of an undertaking based in another contracting state of the Agreement on the European Economic Area or a law office.

The professional trustee may not carry out activity other than property management, and its name must make reference to asset management. The trustee must hold the licenses required for such activity. The professional trustee is required to fulfil strict staff and equipment requirements to receive the license of the National Bank of Hungary.⁵⁰

In Hungary it is also possible for the asset management foundations to conduct trustee activity and for this they do not need the license of the National Bank Hungary.⁵¹

We may observe that it is a trend to regulate the office of the trustee and require the fulfilment of special conditions to fulfil this position. It is especially important in cases where the trust management activity aims to be conducted on a business basis.

6. Asset partitioning

In Russia the trustee must separate the managed property from his own property in legal relationships. According to the trust property, he must indicate to third parties that the transaction is connected to trust property. At the same time, the trustee must keep the trust property on a separate account.⁵² In Ukraine the trust property must be separated from the settlor's and trustee's property as well. The managed property must be registered with the manager's separate bank, and is subject to separate accounting.⁵³ In Georgia the managed property is held by the trustee, and the trustee enjoys the owner's position in relation to third persons. In the Czech Republic the trust assets are absolutely separate from the property of the settlor, the trustee and the beneficiary.⁵⁴ In Romania, Hungary and Lithuania

49 Art. 3(1) of Act XV of 2014 on Trustees and the Regulation of Their Activity.

50 Art. 3(2) – (5) of Act XV of 2014 on Trustees and the Regulation of Their Activity.

51 Regarding the operation of the Hungarian asset management foundation see István SÁNDOR: *Key Features of Private Foundations in a Comparative Law Approach: With Special Emphasize on Asset Management*. *European Review of Private Law*, Volume 29, Issue 6 (2021). 885 ff.

52 Art. 1012(3) and 1018(1) – (2) of the Russian civil code.

53 Art. 1030(3) of the Ukrainian civil code.

54 Art. 1448(3) of the Czech civil code.

the trustee must also manage the managed property separately.⁵⁵

As we can see, asset partitioning is resolved at some extent by law in all the examined regulations.

7. Duration

The trust relationship may last for maximum 5 years in Russia and Ukraine, except where the law permits a longer duration; in Lithuania it is maximum 20 years, also except where the law permits a longer duration; in Romania it is maximum 33 years, maximum 50 years in Hungary, maximum 100 years in the Czech Republic in the case of a private purpose trust, while in Georgia there is no time limitation.⁵⁶

It is common that there is a time limitation to the trust relationship (with the exception of Georgia). We may observe that these time limitations are quite short in Russia, Lithuania, Romania and even in Hungary, compared with the international trends. If we consider that the trust very often functions as asset planning for longer periods of time, then the Russian and Ukrainian models are not suitable to achieve this purpose.

8. Tracing

There are no special rules relating to tracing in Russian, Ukrainian, Lithuanian, Czech and Romanian trust laws. In Hungary both the settlor and the beneficiary have a right to demand third parties to restore the trust property in case the transaction from the trust property was not a purchase made in good faith.⁵⁷ In Lithuania and Russia the settlor remains the owner of the trust property, therefore the settlor has the right to reclaim, vindicate the property any time.

Among the compared jurisdictions, only the Hungarian law regulates the possibility of tracing (following the trust property) for the benefit of the settlor and the beneficiary. This rule is the special adaptation of the English regulation. Under this rule we may argue that the settlor and the beneficiary both have some kind of in rem right to the trust property.

⁵⁵ Art. 786(2) of the Romanian civil code, Art. 6:312 of the Hungarian civil code and Art. 6.961 of the Lithuanian civil code.

⁵⁶ Art. 1016(2) of the Russian civil code, Art. 1036(1) of the Ukrainian civil code, Art. 6.959(2) of the Lithuanian civil code, Art. 779b) of the Romanian civil code, Art. 6:326(3) of the Hungarian civil code, Art. 1460(1) of the Czech civil code.

⁵⁷ Art. 6:318(2) of the Hungarian civil code.

III. Closing remarks

Several conclusions can be drawn on the basis of the comparison. Generally, I would point out that in all the above mentioned countries, asset management is based basically on a contractual relationship between the parties. From this point of view, the Russian, Ukrainian, Georgian models remain on the level of a contract, while the Lithuanian regulation creates an independent in rem right for the trustee. Under the Romanian and Hungarian solutions, the trustee is granted ownership, but asset partitioning is ensured as well, while the Czech law regulates the trust property as if it were an independent entity without owner. In my opinion, Hungarian regulation resembles the English trust the strongest, particularly if we take into account the possibility to establish it by last will and unilateral act, and item the settlor's and beneficiary's right of tracing.

If we think of the function of the trust as an instrument of asset planning, the short duration of the legal relationship can be a relevant obstacle. In Russia and Ukraine, and even in Lithuania, the permitted duration of the legal relationship does not seem to be adequate, while the Czech solution is most aligned to the international trends.

The other very important advantage of the English trust is its flexibility. In all the examined countries a written document required for the establishment of the legal relationship, which may limit willingness to establish fiduciary management. On the other hand, this is understandable in connection with a new legal instrument for documentation reasons and to ensure the protection of creditors. The elasticity of regulations can be criticized in countries, where rigorous requirements are applied to the trustee's person, or the registration of the trust agreement is prescribed. In my opinion, this can be explained with the caution of the legislators, who would like to avoid the possibility of starting a new legal institution with abuses and scandals. I think that once this type of property management becomes a living component of these legal systems, together with the related experience, then these restrictions can be rethought.

I hope that these trust-like devices will play an important role in the economies and societies of Eastern European countries and can fulfil the advantageous functions of the English trust.