MATERIAL LAW USUCAPIO CONDITIONS, AS A MEANS OF ACQUIRING PROPERTY RIGHTS IN THE NEW CIVIL CODE

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Abstract

Besides convention and inheritance, usucapio was, is and will certainly remain the most important and most common way to acquire property of buildings and the importance of this institution was established, confirmed and reinforced by attempts at which the usucapio institution was subject to by doctrine and jurisprudence equally.

Usucapio or acquisitive prescription is a way of acquiring property and other real rights, characterized by the possession of a thing for a period fixed by law. It was provided by art.645 of the Old Civil Code as one of the original ways of acquisition and in art.1847 of the same code it is provided that acquisitive prescription has the same character.

Keywords: *usucapio, acquisitive prescription, most important and most common way to acquire property of buildings, the possession of a thing.*

JEL Classification: *K11*

1. The institution of real estate usucapio in the New Civil Code

In the New Civil Code, the institution of real estate usucapio is governed by art. 930 - 934. According to art. 82 reproduced as amended by art. III pt. 10 of GEO 79/2011, article amended by art. I pt. 22 of Law no. 60/2012, the provisions of art. 930-934 of the New Civil Code apply only in cases where possession began after its entry into force. The cases where possession has started before that date are subject to the provisions relating to usucapio in force from the possession commencement date. With regard to buildings for which, at the possession commencement date, before the entry into force of the Civil Code, no land registries were open, remain applicable the usucapio provisions of the 1864 Civil Code. In the case of possessions started after the entry into force of the Civil Code, if the land registries were open, up to the conditions set out in art. 56 para. 1, the usucapio without property registration provided in art. 930 of the Civil Code shall take effect from the date the application was submitted for summons, requesting that it be found if the legal requirements for this type of acquisition are met, if the action was accepted, respectively from the date the usucapio exception was invoked, if this exception was admitted.

Usucapio is a definite evidence of property and is one of the most significant effects of useful possession. This possession is an actual ownership of a thing and actually occurs from the perspective of the owner as an outward manifestation of a real right. The usucapio justification lies in the fact that most times possession corresponds to the right to property. Proof of ownership is a difficult task, so usucapio as an originally acquisition method removes the inconvenience of the ownership proof[2].

The name "*usucapio*" and this way the acquisition of property was known to Roman law, was acknowledged in the old Romanian law, being extensively treated for instance in the Caragea Code in Wallachia and in Moldova in the Calimah code. In our law the term "*usucapio"* was not found, as it was consecrated by the legal practice.

In the 1864 Civil Code it is regulated in Book III, Title XX, provisions supplemented by the provisions of Decree 167 / 1958 concerning the extinctive prescription, provisions of Decree -Law 115/1938 for the unification of the Land Registry provisions, where this real estate advertising means is still in force.

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Currently, art. 28 of the Cadastre and real estate publicity Law no.7 / 1996 as subsequently amended and completed consecrated the term "usucapio" regarding the enforceability towards third parties, when it comes from usucapio too (among other enumerations).

If the possession of a building extends to a certain duration and certain conditions prescribed by law are met, this cannot remain without legal consequences, the most important result being the birth of the property right over the building in favour of the person who had useful possession over it. Possession prolonged in time is considered by law a source for property.

In doctrine and jurisprudence acquisitive prescription or possession is *defined as a means of acquiring ownership of something, by possessing that thing all the time and in the conditions set by law* [3]. The factual condition turns into lawful condition, which is the main effect of possession.

From the definition it results that usucapio is not possible if the good was obtained under a property translative act, such as for example a donation contract. The existence of a property translative act entitles the occupier to the action in achieving the right, and not to a declaratory one, as is done in the case of usucapio.

Or, according to Article 35 of the NCPC, the declaratory action is not admissible if the party has paved the way in achieving the right, which is based on a title of acquisition, as concluded in the legal practice. So usucapio gives birth to the property right or other real right on an immovable property through his possession by one or more persons in the conditions and terms provided by law. Possession must be continuous. It applies only to rights in rem[4].

If regarding the material law conditions of usucapio there is, basically, an unanimity of views in the sense that their research will be made by reference to the provisions of the old Civil Code under art. 6 of the New Civil Code and art. 82 of Law no. 71/2011, I appreciate that at least apparent problems arise in connection with the special procedure provided for by art. 1049 of the NCPC and usucapio whose possession began under the old Civil Code. Also, I noticed, especially among practitioners, some difference of opinion on this matter.

2. The concept of possession

The concept of possession has been present on the concern of legal doctrine since ancient times. In the last century two major trends appear: the doctrine of K.Savigny [5] according to whom possessing was connected in a small circle, without being an institution, with the assumption *"animus et corpus, animus domini, animus rem sibi habendi, animus possidentis."* The second trend, represented by the doctrine of R.Ihering [6], which deviates from this postulate, gravitating towards a new economic order related definition, to use the object according to its destination, possessing being the outward manifestation of a person's will "through which this person brings with self in nex an object in its total or partial relations, through which the object is presented as it belongs." The relationship between person and object establishes possession by possession thereof.

Possession is a characteristic concept for the usucapio institution. It corresponds to the idea of factual ownership and eloquently illustrates that there is a gap between the legal and non-legal space. Factual elements which circumscribe in the criteria imposed by law lead to legitimation on the law plan, in order to sanctify the reality with which legal order must be in a rational symmetry.

Possession, in that it effectively exercise, falls in a exteriorized relation between the owner and the property on which it exerts and it is a means of advertising due to its effects. It warns those interested on the open and public nature of the property transfer and which is often confused with the right itself. Its importance to usucapio is overwhelming. It went so far as it was considered the fundament of the property right presumption, necessary for the establishment of the real right, in some cases having the function of real estate advertising by its registration in the publicity records. An example is made of the creative effect of possession in the land book regime and in the advertising

[3] P.M.Cosmovici, *Drept civil - Drepturi reale*, Ed.All, 1995,p.94, V.Geonea - *Curs de drept civil*, Ed."Scaiul", Bucharest, 1996, p.45.
[4] A.Colin, H.Capitant, Cours elementaire de droit civil francais, Dalloz, Paris, 1932, p.1141.
[5] K.Savigny, in *Das Recht des Besitzes*. Giessen, 1803.
[6] R.Ihering, in *Der Besitzwille. Zugleich eine Kritik der herschenden juristischen Metode*. Jena, 1889, p.481.

regime through the transcriptions-inscriptions record, possession is the only absolute way to prove the real right[7].

I found from the definition of usucapio that it is based on the prolonged possession of the property under civil circuit. This possession must be capable of leading to usucapio in favour of the possessor, the possession relying on the provisions of the Old Civil Code art.1864. To have the intended effect, namely to lead to the acquisition of ownership, art.1847 Civil code foresees that the following conditions be fulfilled: to be continuous, uninterrupted, undisturbed, public and under the owner's name. These are the qualities that make possession useful in leading to the acquisition of property.

Initially, although the person is in possession of the good, she has the quality of occupier, but behaves like a real owner. One of the legal effects leading to the possession of a good, when the one who possesses behaves towards it as an owner, is usucapio or acquisitive prescription. So, the essential condition of usucapio is possession exercised under certain conditions. It must be useful, which is the opposite to vice, i.e., possession must not be vitiated.

The opposite of the possession quality to be useful are its vices: *discontinuity*, namely the abnormal intermittent exercise (art.1858 Civil code); *violence* or disturbance when it is established or maintained through acts of violence against or from the owner (art.1851 Civil code); *clandestinity***,** namely it is exercised so as not to be known by the entitled person (art.1852 Civil code); *precariousness***,** i.e. it is done on behalf of the owner or having a quality derived from a legal document concluded with this property owner , lessor, lessee, custodian, trustee, co-partner etc. which makes precariousness equate to the lack of possession (art.1853 Old Civil Code)[8].

Precariousness is more than a vice, it is absolute and can be exercised by any interested person. It lies in the lack of the constituent element of the legal possession. Precarious possession may be inverted under art.1858 Civil code, which transforms it into useful and therefore able to lead to acquisition of ownership through usucapio. The simple precarious occupiers cannot use usucapio, they possess the good under an un-translated title bounding them to return it to the owner. This prevents them from having *animus domini*, with the intention to act as owner. When the restitution obligation is extinguished and possession continues its course, begins a useful possession which initially removed the obstacle in front of *animo domini*, or if it interverts the title transforming the commitment into useful possession. In this case he can use usucapio. Precariousness arises as a perpetual vice for a occupier, as long as he maintains his initial commitment features, cannot use usucapio, by any time flow. It is a rule categorically imposed by art.2236 of the French Civil code, which corresponds to art.1853 of our code which is less categorical, but leading to the same conclusion as results from art.1857 that says the occupier cannot change himself the quality of his possession.

The vice resulting from precariousness is not presumed, the other party other than the occupier must prove that possession is precarious. This evidence stems from the existence of a title that would lead to the conclusion that the possessor exercised with precariousness. In case of doubt the law assumes that the owner possessed for himself, but nothing prevents from proving otherwise.

We do not intend to make a detailed analysis of the qualities and defects of possession being widely debated in the specialized literature [9].

We resume to signalling its primary importance for usucapio, moreover, it is conditioned by possession which, in its turn, as it was seen, must meet some requirements which are closely related to the understanding and significance of this mode of acquisition. We show them briefly and in turns.

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[7] A.Boar, *Efectul creator al posesiunii in sistemul de publicitate imobiliara prin carti funciare*, in "R.D."no.1/1996, p.70-71.

[8] In this respect, Supreme Court., Dec.nr.1518/1978, in "R.R.D." nr.3/1979, p.57; nr.972/1976, in C.D. for year1976, p.52; C.S.J., Dec.nr.391/1992, in V.Bogdanescu a.o., C.S.J., S.civ., Dec.nr.391/4 mart.1992, in *Probleme de drept din deciziile C.S.J…,* Ed.Orizonturi 1993, p.39-41; T.S., Dec.nr.1945/1982, in C.D., 1982, p.25; Dec.nr.1335/1975, in C.D. for year1975, p.131.

[9] D.Gherasim, *Teoria generala a posesiei in dreptul civil roman*, Ed.Acad.R.S.R., p.44-52; C.Barsan, *Regimul juridic al bunurilor imobile*, Ed. St. and Encicl., Buc., 1993, p.76-78.

Continuity of possession is a condition imposed by art.1847 Civil code. It consists in the status quo made through the inheritance, if not permanent, at least regular, and closely related to the nature of the good, of the material ownership documents. For reasons imposed by the normal human activities of an organized society, the law cannot nor does require the constant use of things, because such use is impossible and its claiming appears absurd. So we have to take into account the nature of the possession to which the good is susceptible and all circumstances of the case. On the other hand, the continuity of possession is presumed without it preventing the contrary proof (art.1850 Civil code).

The possession of a property once acquired through material documents sufficient enough to enter the contents of continuity is preserved by simple intent of the owner, as long as it was not abandoned voluntarily or if it was not destroyed by another effective possession. This is the most realistic thesis and it constitutes a presumption of continuity which is deducted, as I remember, from art.1850 Civil code.

The intent to possess, *solo animo,* that occurs in moments of intermittence, is not sufficient for the possession to be continuous unless it is exercised in all occasions and at all times in relation to the nature of the possessed thing, without abnormal and prolonged intervals of time, which can mean either an abandonment or intercalation of other possessions, which are reasons for it to be appreciated as a discontinuous possession.

Discontinuity is the vice of possession continuity, it is temporary meaning that it disappears as soon as the material property acts are set out in normal inheritance. Discontinuity involving the removal of continuity must be with abnormal pauses.

Another condition of possession, listed in under art. 1847, requires it to be *continuous*. It is more related to the concept of usucapio because in the context interruption is not a vice of possession, it is an actual interruption of the acquisitive prescription. Unlike continuity, which is the work of the occupier himself, interruption is due to a third party, which often is the owner, leading to cancellation of possession. The continuous character is a factual condition of any possession.

Same art.1847 of the Civil code provides that possession must be ”*undisturbed”,* namely it must not be based on acts of violence. The text of art.1851 of the Civil Code states that*: „Possession is disturbed when founded or preserved through acts of violence against or by the opponent.”* Violence, as vice of possession, contrary to the quality of '*undisturbed*' may be *material* or *moral*. In case law after 1989 it is assessed that moral violence consists in the impossibility imposed by the former communist for the former owner to claim a right [10].

It was reported in pronounced solutions that buildings were assumed by obstructing the owner through excessive authority measures and it is qualified as an act of physical violence and possession was therefore illegitimate, and later turned into mora violence , maintained until the change of the political system.

It was reported that both in terms of art.1851 of the Civil Code, as well as the special prescription established in favour of the State by Dec.nr.218 / 1960 and 712/1966, the owner could not act from moral constraint resulting impediments imposed by the legal system of the former regime, although he had made requests and other administrative procedures. The State could not invoke the acquisition of ownership through usucapio, because the possession complies with art.1851 that is it was founded on acts of violence [11].

If the state prevails the acquisitive prescription, it does not have the burden of proving that the possession met all the qualities required by law to be useful *ad usucapionem*, being the opponent's task (the former owner) to prove the defects that would prevent it from being useful. The alleged defect being relative (violence, clandestinity, precariousness) only the one against whom it has this character may invoke it to make it inefficient towards the prescription (art. 1862 Civil Code) So possession must qualitatively contain its elements, meaning the absence of vices.

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[10] See C.S.J., Civil sentence, Dec.nr.1086/11 mai 1993, commented by E.Lupan and I. Sabau, in magazine. ”PRO-IURE” no. 2/1995, p.13-15.

[11] In this respect, C.S.J., Civil sentence, Dec.nr.506/19 March.1992; Dec.nr.465/2 February 1993, commented and quoted by E.Lupan and I.Sabau, *quoted work.,* p.14-15.

In another case, they did not accept the defence of a company successor of rights of a state enterprises as a result of reorganization under Law 15/1990, which invoked possession for over 30 years, leading to the acquisition of ownership through long term usucapio. The condition of having an 'undisturbed' possession was not met, because, in this case, it was founded and then preserved through arbitrariness (violence), initially physical and which later became psychological violence, consisting of continuous fear felt by the deprived plaintiffs throughout the entire totalitarian regime of state possession. For the same reason it was decided _ that they cannot accept the claim that the property would be turned over to the state following the application of Decree 167 / 1958 and of Decr.nr.712 / 1966 regarding the goods under Article III from Decr.nr.218 / 1960.

The 2 year long possession provided by this last decree, for prescribing the right to action could not be founded on an act of violence, as in this case, to this prescription being also applicable the rules of common law in art.1847 of the Civil Code concerning the conditions to be met in order to prescribe. Decr.nr.218 / 1960 has not restricted the scope of these provisions, as there is no provision therein as shown. It thus appears that the recognition of the property right of the plaintiffs over the claimed building, acquired by them in 1950 under an authenticated sale contract, never dissolved through the decision of the first instance, is legal and thorough.

The undisturbed character of the possession is a condition that is not fulfilled, when the state repression authorities instil the fear of being exposed to harm during the entire time that possession lasted and until suing. The Supreme Court Jurisprudence after 1990, considered for a period that possession of State agencies in conditions of moral violence prevents the acquisitive prescription[12].

The current jurisprudence was concerned with this possession vice and by interpreting art.1850 of the Civil Code it become widespread in the practice of courts that the possession exercised by the state, through its organs, given the existence of a moral violence, has made it un-useful and hindered the application of acquisitive prescription, which would lead to the acquisition of ownership. The poignancy of a political regime or system that inspires fear and coercion are accepted as a vice (violence) that prevents useful possession.

Thus, in this case, the owner was simply dispossessed in 1954 through physical and moral constraint, determined to leave the house without it being nationalized or expropriated[13]. For the same reason, they did _ not accept the claim that the property in question has been made property of the state as result of applying Decr.nr.218 / 1960 to this special prescription also being applicable the special provisions of the Civil Code art.1847. The building taking over was undoubtedly illegitimate, which turned into moral violence, because it was not exercised under a right conferred by law and subsequently they maintained the fear of exposure to harm during the entire time that possession lasted. This possession lost its usefulness and prevents the acquisitive prescription from operating, which would lead to the acquisition of ownership over the property.

Another condition is that the possession must be *public (not clandestine)***,** element that means it must be exercised in front of everyone and be known as such by all who desire and need to know and see.

Clandestinity is the vice of published possession and involves the stealthily exercise of possession towards the true owner, so he cannot acknowledge it, according to art.1582 Civil Code.

In the legal practice it was decided that the tenant is a precarious bailee, he cannot acquire ownership of the rented property through usucapio as long as he exercises dominion as lessor and not as owner. Failing to pay the rent does not mean that the owner gave up and has no relevance to usucapio[14]. Precariousness is permanent and creates the presumption that it has existed until the end. Jurisprudence was not constant and was pronounced otherwise [15].

It was acknowledged that if a person initially used a room as a tenant under a lease agreement, signed with the landlord, and from a certain date has used it constantly, continuously, for over 30

[12] In this respect, C.S.J., Civil sentence, Dec.nr.609/2 apr.1992, in "R.D." nr.10/1992, p.92.
[13] In this respect, Craiova Court of Appeals, Dec.civ.nr.1002/1994, in Revista juridica a Olteniei nr.1-2/1995, p.91.
[14] In this respect, Supreme Court., Civil sentence, Dec.nr.2101/8 noi.1972, in I.Mihuta, *Repertoriu ... pe anii 1969-1975*, p.106-107.
[15] In this respect, Bucharest Court of Law., S.III civ., Dec.nr.116/1991, in *Culegere ... for year1991,* p.117.

years (in this case between 1959-1989), paying the related tax, he has acquired ownership of that room through usucapio, because usucapio can take place on a portion of the building.

Also, documents prepared for the thing belonging to someone else as a lessor is not a possession as owner. The lessor exerting the possession in the name of another that of the owner, as a precarious occupier cannot benefit from the provisions of the Code on usucapio, no matter how long the possession lasts[16].

Also connected to this matter, in the jurisprudence of the former Supreme Court, being still of actuality, it was decided that the mastery of a building, but with indulgence from the owner, cannot lead to acquisition property through usucapio. That person is not exercising a useful possession because the owner was actually a precarious bailee. This even if he had used the good for more than 30 years[17].

The occupier does not benefit from usucapio however long his possession as a precarious bailee would last. The occupier can change himself or through intermediaries, the material ownership act with a precarious possession title, if there is no legal act leading to inversion. Precariousness change can only result from acts of resistance through which the occupier denies the exercise of the right by the one for whom he owns the property delving into open conflict with the latter. Inversion will not be possible if the owner was not at least informed about the lessor's change of attitude. The remedy for the occupier appears in the situation where precariousness turns into useful possession through one of the accepted ways, that is denying the owner's right through acts to which the law confers such a consequence.

In connection with possession being *public,* it can happen in practice that the initial quality changes too. Thus, it can happen that the possession, which was initially clandestine, to later become public, or vice versa. In both cases there is only one solution: advertising must exist throughout the period during which possession is invoked for the benefit of usucapio.

As for real estate advertising, the hypothetical and very rare situation was exemplified through gradual and unnoticed occupation of a strip of land in the neighbouring background. It was solved by the doctrine in the sense that the fact of cultivating a strip of land from neighbour's property is a fact of public possession and thus of useful possession.

Finally, possession must be *unequivocal*. According to some authors ambiguity is not a distinct vice, but is confused with precariousness because cases about an equivocal possession are precisely those in which the occupier possesses for himself and on behalf of someone else. We are given the example of the usufructuary who, in relation to the third, possesses for himself and in relation to the owner of the property is the occupier, and also the one of the co-heirs on the undivided goods. Although there are similarities close to identification, we feel that the lack of equivocation must be seen as a special quality of possession, needed to use usucapio.

Possession is equivocal, and therefore vitiated, when it is not known if it is the manifestation of a right and is based on a title or not. Equivocation is a vice affecting the *animus* element. In jurisprudence the equivocal possession nature was consecrated by the Supreme Court in the case of inheritance, when heirs acquire the status of co-owners. They are supposed to own the goods the ones for the others as long as severalty lasts and cannot ground against each other the acquisition of ownership through usucapio [18]. As an exception to this rule, if the possession of one of the heirs upon certain inherited assets which were initially in joint possession, subsequently intervened and demonstrated that he understood to transform the possession, originally common, into an exclusive one, it is able to lead to the acquisition of ownership through usucapio[19]. He will have to prove that there was in fact an inversion of possession.

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[16] In this respect, V.Bogdanescu s.a., C.S.J., Civil sentence, Dec.nr.391/4 March 1992, in *Probleme de drept din deciziile C.S.J…,* Ed.Orizonturi 1993, p.39-41.

[17] In this respect, Supreme Court., Civil sentence, Dec.nr.1327/30 iul.1971, in I.G.Mihuta, in *Repertoriu … pe anii 1969-1975*, p.107; Dec.nr.1431/30 June. 1972, p.106.

[18] In this respect, Supreme Court., Civil sentence, Dec.nr. 972/1976, in ”C.D.” for year 1976, p.52-54; Dec.nr.392/5 March 1986, in ”C.D.” for year 1986, p.15-17.

[19] In this respect, Supreme Court., Civil sentence, Dec.nr.769/21 April 1979, in ”C.D.” pe 1979, p.37-38.

The hypothesis of acquisition through possession inversion from an equivocal one into an unequivocal one, in the case of co-heirs, is provided in the final sentence of art.729 Civil Code and debated in specialized literature[20].

As long as an heir possesses and preserves the quality of heir, he owns both for himself and for the others, possession having an equivocal nature and being un-useful for acquiring through prescription. He may possess for himself by inverting the heir title, or exercise a new uncorrupted possession when he did not know the author's vice or one that would disqualify him from the position of heir on that property. In other words, possession against co-heirs or when an author's vicious possession starts or he can only use usucapio, for more than 30 years. For the 10-20 years one, it implies fair title and good faith, which is not applicable in severalty resulting from the inheritance. He cannot use the 30 years usucapio because the inheritance cannot be used as a fair title.

The situation is different if the co-heir is an occupier of the building, e.g. tenant or depositary, he is, in these cases, a simple precarious owner obliged to restitution so he will have to intervert the title Civil Code art.1858 in order to benefit from acquisitive prescription provided by art.729 of the Civil Code. For the reasons of the mentioned decision, it clearly results the judicial practice guideline when it comes to acquisitive prescription between heirs found in joint ownership.

Thus, to summarize, the successors are supposed to own the inherited property one for another, reason for which their possession is not able to substantiate the acquisition of ownership through usucapio. Completely exceptional and forced to prove against the presumption of joint ownership, when one of the heirs owns with an owner title an inherited good, under possessions, he can acquire ownership through usucapio, only if the possession lasted at least 30 years. Mastery of that good is done under the name of the owner by that heir, under the_ conditions of a useful possession he can acquire through usucapio that good. The manifestation of will must occur exteriorized in order to understand that the joint possession turned into exclusive possession through specific facts. The other co-heirs must be warned of this circumstance, through unmistakable externalization of will. This kind of possession can lead to usucapio for more than 30 years. It cannot be the basis of 10 to 20 years usucapio, because legacy is not a *'just cause'* within the meaning of Civil Code art.1897.

In recent principle and jurisprudence, usucapio does not flow between severalties whose condition is a result of a legacy. It is presumed that possession exercised by any of them is exteriorized the in the interest and on behalf of all. In this case, from mere fact of payment of local taxes by an heir and from the fact that the other two live in different areas of the country, did not entitle the plaintiff to claim the acquisitive prescription.

The specialized literature was also noted that the equivocal vice is *relative and limited*. The equivoque is *relative* in that, as in the case of severalty, third parties cannot invoke this vice on a n owner's documents, because it refers to the relationship between the co-owners and as such it can be questioned. The equivoque is *limited* because when the joint possession is exercised simultaneously by multiple people it is equivocal for any person that possesses in common and cannot benefit any of them exclusively. In order to prescribe, the ownership by one of the co-partners (in this case heir) is suitable only if there has been an exterior manifestation of his will , showing that he understood to transform it into exclusive possession. Namely, an inversion of possession was made through material ownership documents[21].

As a matter of fact it consists in property ownership by a person claiming to be the holder of a real right on that property, being able to be exercised by another person on his behalf.

When possession is consistent with the law, it is legitimate, otherwise being unlawful. In both cases, in order to be useful and produce the desired effects it must be continuous, uninterrupted, undisturbed and under the owner's name.

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[20] M.Eliescu, *Transmisiunea si imparteala mostenirii*, Ed.Acad., 1966, p.214-217; D. Chirica, *Drept civil - Succesiuni*, Ed.Lumina Lex, 1996, p.293-294; Supreme Court., Civil sentence, Dec.nr.1401/1985, in "R.R.D." nr.5/1986, p.82.

[21] In this respect, Supreme Court., Civil sentence, Dec.nr.1903/30 October 1975, in "C.D." 1975, p.66-68.

3. Conclusions

In the matter of acquiring ownership of real estate, usucapio underwent important changes through the New Civil Code, particularly regarding the terms and conditions under which it can be obtained. Thus the 30 years usucapio and the 10 to 20 years usucapio, regulated by the 1864 Civil Code, have been replaced now by **10 years usucapio without registration** (art. 930 NCC) and the **5 year registered usucapio** (art. 931 NCC).

1. The **10 years usucapio without registration** provides that ownership of a property or a dismemberment of it can be registered in the land register if a **uncorrupted possession has been exercised for 10 years**, **the building has not been registered until that date in the Land Registry**, or if it has been registered, **its owner ay have died** or, in the case of legal entities, they **ceased to exist**, or a **waiver to the ownership right on that property** has been registered in the land registry.

If all these conditions are met, we can say that one can acquire ownership of the property, but **only upon registering the declaration of usucapio enrolment in the Land Registry, and only if a third party** (for example, the heir of the deceased owner) **has not already registered an application for registering his own right over the building**. If the third party bases its request for registration on the rights or on a legitimate cause, he may prevent the acquisitive prescription in the acquisition of the property, even if the period of 10 years usucapio was reached. It is worth mentioning that in case of unregistered usucapio, the term usucapio begins to flow from **the time the possessed building remained without owner respectively the owner has died, has ceased to exist or renounced his right**, even if the possession of the invoking party began before that moment.

2. As for **the 5 years registered usucapio**, provided by art. 931 NCC, it operates only in situations where a property owner, considering **himself the owner for good reasons**, but **under an invalid title, registers his right over the building in the Land Registry**. If **after the registration of his application** for registration in the Land Registry, **he exercises an useful and uncorrupted possession for five years**, he may acquire ownership through the 5 years registered usucapio, that can no longer be questioned after the registration of his application to register. In order to acquire such property right, **good- faith , must exist both at the time of entering into possession, as well as at the date of filing the application for registration in the Land Registry.**

The provisions relating to these two types of real estate usucapio, as amended, only apply to cases where possession began after the coming into force of the New Civil Code, respectively after the date of October 1st, 2011.

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