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# THE ORIGIN AND HISTORICAL EVOLUTION OF THE INSTITUTION OF UZUCAPION

**Mariana-Alina ZISU**[1]
*ORCID ID:* 0000-0003-2778-3749
*E-mail:* stefanoaia.mariana@yahoo.com
**Rodica-Raluca ȘTEFĂNOAIA**[2]
*ORCID ID:* 0009-0007-3113-1715
*E-mail:* stefanoaia.raluca@yahoo.com
*Afiliation:* [1] Legal adviser drd., member of the Methodological and Professional Guidance Commission of the "College of Legal Advisers Suceava" Association, member of the Methodological and Professional Guidance Commission of the Federation "Order of Legal Advisers from Romania"
[2]Legal adviser at the Lostun Răzvan Laurian Individual Notarial Office, member of the Association "College of Legal Advisers Suceava"

***Abstract:*** *Usucapion (or acquisitive prescription) is a fundamental legal institution in civil law, with deep roots in history. It allows the acquisition of ownership of an immovable or movable asset through long-term, continuous and uncontested possession, according to conditions established by law. Usucapion is a legal institution that evolved from the need to ensure the stability and security of the civil circuit. From its origins in Roman law to modern regulations, usucapion has remained an essential mechanism for clarifying and consolidating property rights, adapting to the needs of society and legislative changes.*

***Keywords:*** *usucapion; property right; real estate; civil circuit.*

## Introduction

The Romans arrived late at the abstract concept of the mode of acquiring property, progress in the sense of abstracting this concept being recorded only towards the end of the classical era. Analysis of Roman texts reveals several classifications of the modes of acquiring property:

civil law and gentile law, universal title and particular title, original and derivative, conventional and unconventional.

Occupation represented the taking possession of an ownerless thing (res nullius) and was one of the oldest and, at the same time, long-lived modes of acquiring property. Mancipation originally constituted a way of creating property-power over mancipi things, later becoming the original form of carrying out the legal operation of sale, subject to complicated formal conditions.

Usucapion was a way of acquiring ownership of mancipi things through long-term use, which initially had the function of ensuring the use of these goods according to their economic destination, a function to which was added along the way that of eliminating uncertainties regarding ownership.

In iure cessio was a conventional derivative way of acquiring property, which involved organizing a simulated trial within a gracious jurisdiction. Unlike the complicated modes of civil law, tradition – a legal act of the gentiles – ensured the transmission of ownership, possession or detention of non-mancipi corporeal things in an efficient way and without the need for solemn forms. Specification, as the original way of acquiring property, involved the making by a person of a new thing with the material belonging to another person.

Accession was achieved by the legal absorption of the accessory thing by the main one. Other ways of acquiring property were adiudicatio, the law and the alienation carried out by the Roman state.

## I. Historical evolution of the institution of usucapion

### A. Roman law

Present since Roman private law, usucapion has evolved over time, forming a rich and controversial history. Likewise, we must mention the fact that some European countries took over the institution of prescriptio longi temporis of Roman law, and other countries – usucapio (the classical form of usucapion). Usucapion, in Roman law, was regulated, in particular, by the Law of the Twelve Tables, which granted this

institution a single article (art. 2 of the 6th Table). According to it, the term of usucapion for movable property was 1 year and 2 years for immovable property. The effects of usucapion could be invoked by Roman citizens and only on Roman property. It assumed the fulfillment of certain conditions: possession of the thing, the term, just cause, good faith and a thing susceptible to be usucaped.

A first condition is the possession of the thing for the entire period of time provided by law by the one who usucapates. The Law of the Twelve Tables required both possession and use of the thing, because initially possession did not imply use but only the preservation of the thing. Another condition is the term established by law. The term for the possessor of a movable thing is one year, and in the case of immovables the term is two years in order to acquire the right of ownership by usucapion.

From the moment the term has expired, the possessor becomes the owner of the goods possessed as a result of possession and the passage of time. The term must not be interrupted.

A simple notification addressed to the possessor entails the interruption of the term for usucapion. The thing must be susceptible to usucapion. Res habilis is the condition that designates the thing susceptible to usucapion. Usucapion applies only to quiritary property. Not all things were susceptible to be acquired by usucapion. Stolen things (res furtive), stolen and hidden things (res subrepte), things possessed by violence (res vi possessae), city walls, tombs, etc. could not be usucaped. According to the provisions of the Law of the Twelve Tables, houses could not be usucaped, except starting from a much later period.

Also, inalienable things such as the immovables of wards and minors, the endowment fund and things over which there is a dispute (res litigiosae) could not be the object of usucapion. Just title was also required for usucapion. Just title is understood as an act or a legal fact of the possessor susceptible to take possession of the property.

In addition to just title, good faith (bona fides) was also necessary, that is, the firm and sincere conviction of the usucapant that the person

from whom he acquired the property is the full owner of it. This belief must exist at the moment when the transfer of possession from non dominus to usucapant took place.

Also, usucapion is accessible in the event that someone has acquired the property of res mancipii by tradition. As for the persons who could usurp, only Roman citizens benefited from this way of acquiring property, peregrini not being able to have qiuiritary property, no matter how long their possession was.

Over time, the Roman emperors, inspired by Greek law, created another institution similar to usurpation, to which peregrini also had access, being applied also to provincial funds.

This new institution was called prescriptio longi temporis. Through it, the gaps of usurpation tend to be removed. Praescriptio longi temporis partly imitates the effects of usurpation but also presents differences from it.

Praescriptio longi temporis imposes a term of ten years between the parties present, when the parties lived in the same city (later it was sufficient if they lived in the territory of the same province) and twenty years between the absentees, when the parties did not live in the same city or province respectively. No distinction was made regarding the term when movable or immovable property was acquired through usucapion. The possession exercised by the one who invokes the praescriptio logi temporis must be based on just title and good faith. The Law of the Twelve Tables is not the only act that introduced, during the Republic, the prohibition of usucapion of stolen property. Thus, in 149 BC, the Atinian Law to a certain extent modified the prohibition on usucapion declared in the Law of the Twelve Tables. As regards the object of usucapion, the Atinian Law is quite narrowly limited to stolen things.

The usucapion of things acquired by other means is dealt with by a separate law - the Iulian and Plautian laws. The significance of the Atinian Law in the development of usucapion lies in the additional interpretation of the rule contained in the Law of the Twelve Tables. It is extended to include the usucapion of stolen things, which have returned to the power of the person from whom they were appropriated. This has

come to be known as reversio in potestatem Domini.[5, p. 59] One of the few Romanian laws that regulates the institution of usucapion is the Code of Callimachus, which grants 68 articles to acquisitive prescription. Although chapter 4 of part III of the Code is entitled "On usucapion and on prescription", the legislator carefully differentiates these two institutions.

Thus, while "the loss of a right due to non-use within the term determined by law is called prescription", "if the right, which has expired by prescription, is transferred to another person in the power of lawful possession, it is called the right acquired by use, and the manner of its acquisition is called usucapy". [3, art. 1906-1907] The Calimach Code specified that the goods that can be the object of usucapy are those that are in commerce, and the goods whose possession is prohibited (goods that have gone out of commerce, inalienable, such as, for example, the rights due to the owner, the ruler: the right to collect customs duties, to mint money, to impose taxes, etc.) cannot be the object of usucapy, although art. 1935 results otherwise.

At the same time, for usucapion to exist, the following conditions had to be met: just and worthy possession, in good faith and without prejudice, and the passage of time. Just and worthy possession implied possession based on a just title, such as: bequest, donation, loan, sale-purchase, exchange, payment of a debt, dowry, gambling, acquisition in good faith of the found good.

The law also established 2 forms of usucapion: movable and immovable. The right of ownership over movable things was acquired through possession in good faith, followed by the passage of three years, while over immovable things – through possession followed by the passage of ten years, and if the owners were alienated, by the passage of twenty years.

Through long-term possession for 30 years, goods acquired in good faith and with just title from a possessor in bad faith could be obtained. As for church, monastery, hospital, city immovable property, as well as things whose alienation is prohibited by law (public domain goods) or will, these were acquired by usucapion within a period of 40 years.

At the same time, the law provides prohibitions regarding the subjects of the right of usucapion. Thus, bad faith acquirers, according to the Calimach Code, cannot become subjects of usucapion, not even by possessing the property for a period of 40 years. [3, art. 1940]

Likewise, the following persons cannot acquire the right of ownership by usucapion, until guardians or curators are established over them: persons who lack discernment, minors, paupers, lunatics, the insane or stupid, slaves. [3, art. 1964]

**B. Communist regime**

During the communist period, usucapion was largely limited, especially for real estate, as private ownership of land was restricted. However, it continued to operate for certain assets, being maintained in the Civil Code of 1864, with some adaptations.

**C. The Romanian Civil Code of 1864**

The Romanian Civil Code of 1864 regulated two forms of usucapion: the 10-20 year usucapion (consecrated by the provisions of art. 1895), that is, the usucapion proper of Roman law, which consolidates, through possession in good faith, a just title that could not produce its translatable effect, and the 30-year acquisitive prescription (consecrated by the provisions of art. 1390), [2, art. 1390] for the fulfillment of which no other condition is required than that of exercising possession over the property, for the duration established by law. Each of these is distinguished by specific features and, therefore, in what follows, we will analyze them separately.

The Civil Code of 1864 prohibits usucapion of inalienable goods, but it allows the acquisition of property even by a possessor in bad faith. 30-year usucapion. There is a 30-year usucapion if the person who claims to have acquired the right of ownership or another main real right in this way can prove:

- that he has possessed the thing for 30 years and;
- that his possession was useful; defective possession, as well as simple precarious detention, do not have acquisitive effects. It should be

noted that the law presumes the regularity of possession. In this variant, usucapion is carried out even through bad faith possession. Usucapion of 10 to 20 years.

According to art. 1895 Code. civil, "he who acquires in good faith and through a just cause a certain immovable shall prescribe the property of that person after ten years, if the true owner resides within the territorial area of the (county) tribunal where the immovable is located, and after twenty years, if he resides outside that territorial area". From the economy of this text it results that the usucapion of 10 to 20 years involves two cumulative conditions, namely:

- The possession must be in good faith and
- The possession must be based on a just title or, in the terminology of the Civil Code, on a "just cause".

Regarding the objects of usucapion, the Romanian legislator establishes that "the domain of things which, by their own nature or by a declaration of the law, cannot be objects of private property, but are taken out of commerce, cannot be prescribed".

The provision of art. 1844 means that goods cannot be usucaped inalienable, whether their inalienability is due to a natural unavailability, or whether it is due to a legal unavailability. [2, art. 1844]

All other goods that are not removed from commerce, that is, are alienable, can be usucapated. Thus, usucapation flows even against the Private Domain of the state, counties, communes and public establishments, as well as in their favor (art. 1845). [2, art. 1845]

In addition, the Romanian Civil Code mentions the conditions of possession. Thus, possession must be continuous, uninterrupted, undisturbed, public and under the name of the owner. In a word, possession must not be vitiated.

**D. Current Civil Code (2011)**

With the entry into force of the new Civil Code of Romania (Law no. 287/2009, in force since 2011), the institution of usucapation was modernized.

The main seat of the matter of usucapation is regulated by art. 928-934, art. 939 C. civ. Therefore, usucapion is regulated, in the Civil Code, in the matter of the effects of possession, applying, however, appropriately, the provisions regarding the extinctive prescription (art. 934 Civil Code) and can be defined as a way of acquiring the right of ownership and other main real rights by exercising uninterrupted possession over an asset, within the term and under the conditions provided by law (Dima, 2006, p. 206).

**a. Justification of the institution is analyzed:**

– by reference to the situation of the possessor: the need for stability of situations and legal relationships requires, subject to certain conditions, the recognition of legal effects to the long-standing appearance of ownership, until the transformation of a factual situation into a state of law;

– by reference to the situation of the former owner: indirectly, usucapion also constitutes a sanction against his passivity, because he dispossessed his property and lost interest in it for a long time, leaving it in the possession of another person, who behaved as the owner or as the holder of another main real right;

– due to the fact that it is an original way of acquiring the right of ownership, it can constitute absolute proof of the right of ownership, thus removing the existing difficulties in proving the right of ownership, both in the matter of the action for claim, and in other matters.

The justification for usucapion lies in the fact that, although possession is a state of fact, most of the time it corresponds to the right of ownership, but the proof of this is quite difficult to produce and thus usucapion removes any evidentiary inconveniences. In the person of the true owner, usucapion operates as a sanction for the fact that he has neglected his property, leaving it for a long time. The jurisprudence of the European Court of Human Rights recognizes the acquisitive effect of the right of ownership as a result of usucapion, ruling that, although it represents an interference with the right of the true owner, this interference is compatible with art. 1 of Protocol no. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The

Court has shown that, even in the situation where a real estate right must be subject to real estate advertising formalities, the legislature of each state may give precedence to long-term possession[1].

**b. Typology of usucapion.**

Depending on the goods over which possession is held, as the basis for acquiring the main real right through acquisitive prescription, the new Civil Code distinguishes between real estate usucapion, established by art. 930-934 and movable usucapion, established by art. 939. Real estate usucapion is regulated in a similar way to real estate usucapion in the vision of Decree-Law no. 115/1938 for the unification of provisions regarding land registers [published in the Official Gazette no. 95 of 27 April 1938 and repealed by art. 230 letter g) of the Civil Code (Ungur, 2007, pp. 71-83.). The Civil Code maintains the concept of the types of usucapion, extratabular and tabular, with the notable difference being the reduction of the terms from twenty years to ten years, in the case of extratabular usucapion, and from ten years to five years, in the case of tabular usucapion (Stoica, 2006, pp. 9-33).

**c. Application of civil law over time.**

In analyzing the institution of usucapion regulated in the current Civil Code, the provisions of art. 82 of the Civil Code must also be taken into account, according to which the provisions of art. 930-934 of the Civil Code apply only if possession began after the entry into force of the Code. If possession began before this moment, the provisions relating to usucapion in force on the date of commencement of possession remain applicable. In the case of real estate not registered in the land register, on the date of commencement of possession, the provisions of the Civil Code of 1864 remain applicable.

In addition, as a principle in the matter of the application of civil law over time, the new Civil Code states, in art. 6 paragraph (4), that usucapion begun and not completed on the date of entry into force of the

[1] ECtHR, judgment of 30 August 2007, J.A. Pye (Oxford) Ltd and J.A. Pye Land (Oxford) Ltd v. United Kingdom, p. 74.

new law, is subject in its entirety to the legal provisions that established it. Usucapion in the system of the Civil Code of 1864 is of two types: usucapion of 30 years (art. 1890) and usucapion of 10 to 20 years (1895-1899). The two types of acquisitive prescription assume the fulfillment of common conditions that concern the existence of a useful possession and its exercise for the period of time provided by law, and specific conditions, such as possession in good faith and its foundation on a just title, in the case of short usucapion.

Currently, usucapion is of two types:

**1. Extratabular usucapion** represents a way of acquiring the right of ownership or its dismemberments over an immovable property, through uninterrupted possession thereof for at least 10 years, with the fulfillment of the conditions provided by law and by the positive exercise of the potestative right of option regarding usucapion.

Usucapion regulated by the text of art. 930 paragraph (1) of the Civil Code is called extratabular because it operates in favor of a person who is not registered in the land register. Also, if the owner was registered, this type of usucapion will have effects against the person who already enjoys the presumption arising from registration in the land register.

In accordance with the provisions of art. 930 paragraph (1) of the Civil Code, both the right of ownership and its dismemberments can be acquired through extratabular usucapion, unlike the regulation provided by art. 28 of Decree-Law no. 115/1938, according to which only the right of ownership could be acquired through usucapion.

**2. Tabular usucapion** represents a way of acquiring a main real right over an immovable property, through uninterrupted possession of it for at least 5 years, with the fulfillment of the conditions provided by law.

Usucapion regulated by the text of art. 931 paragraph (1) is called tabular because it operates in favor of the person who is registered in the land register, and not against the person who already enjoys the presumption arising from registration in the land register.

By the will of the legislator, tabular usucapion applies to the main real rights registered in the land register, without legitimate cause, namely the right of ownership and its dismemberments.

## Conclusions

Therefore, usucapion is a general way of acquiring the right of ownership, but it also constitutes an indirect sanction directed against the former owner of the property, who, showing negligence, left it in the possession of another person for a long time, allowing him through his passivity to behave publicly as the owner. Therefore, the active procedural capacity in the request for the establishment of the right of ownership by usucapion can only be held by the former owner of the property and since the plaintiff did not prove ownership of the land in dispute, and the defendant has consistently demonstrated to the court that the plaintiff never had the land in question in his patrimony, it is obvious that the plaintiff does not have active procedural capacity.

## References


Dima. (2006). *Usucapiunea. Studiu de doctrină si jurisprudence* (*Usucapion. Study of doctrine and jurisprudence*). Hamangiu.

ECHR, decision of 30 August 2007, J.A. Pye (Oxford) Ltd et J.A. Pye Land (Oxford) Ltd v. United Kingdom, p. 74.

Law 287/2009 regarding the Civil Code.

Stoica, V. (2006). Usucapiunea tabulară și usucapiunea extratabulară (Tabular usucapion and extratabular usucapion). *Dreptul,* 6.

Ungur, D.C. (2007). Law applicable to actions in ascertaining the acquisition by usucapiunea of the right of ownership over a property located in the area of incidence of Decree-Law no. 115/1938, introduced after the entry into force of Law no. 7/1996. *Dreptul,* 6.