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ACQUISITION OF OWNERSHIP THROUGH ADVERSE POSSESSION OF SOCIALLY OWNED LAND

The removal of the provision prohibiting the possibility of acquiring ownership through usucapio of land in social ownership has created numerous dilemmas and made this legal institute topical. The courts have faced not only the challenge of determining how to assess the legality and conscientiousness of the possessor, but also the question whether the time that elapsed before the prohibition was lifted could be included in the time period for acquisition of ownership. Considering the significant number of court disputes, the authors believe that it is important to address this issue. Although it seems that the institute of usucapio is slowly fading into obscurity, because it contradicts the idea of properly maintained land registers, the fact is that courts still resort to its rules, since it sometimes remains a last resort in their attempts to transform certain factual situations into legal ones.

Key words: *Adverse possession (Usucapio)*. – *Ownership*. – *Right of use*. – *Social ownership*. – *Calculation of time.*

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1. INTRODUCTION

One might think that social ownership (*društvena svojina*) is a long-forgotten phenomenon, completely undeserving of mentioning today. Such reasoning, however, would only indicate insufficient knowledge of the consequences that this institute has created, and thus directed the development of Serbian real estate law. The judicial practice of the entire former Yugoslav region still faces issues stemming from the former monopoly of social ownership. There are still ongoing disputes before the courts in which one of the parties claims to have acquired the right of ownership of land, even though the land is socially owned,[1] through adverse possession (usucapio). Therefore, although it is undeniable that the institute of usucapio is slowly becoming history today, in the so-called "old cases" it certainly finds application.

When it comes to the application of usucapio in cases of social ownership, there is a number of open questions to which judicial practice provides different answers, which all leads to the creation of uneven judicial practice. Problems arise not only in terms of whether a possessor can be considered a lawful and bona fide possessor when the land is socially-owned property, but also in terms of whether (and in what way) the time that elapsed before the amendments to the 1996 Law on Basis of Ownership and Proprietary Relations,[2] which abolished the prohibition on acquiring ownership of socially-owned property, can be included in the period required for acquiring property through usucapio.

However, before attempting to provide possible answers to the controversial issues in practice, it seems useful to briefly outline the historical development (and abandonment) of the idea of prohibiting the acquisition of ownership rights through usucapio of socially owned land, examine whether there are any socially owned lands on which property rights cannot be acquired through usucapio, and briefly outline the conditions necessary for acquiring property rights through usucapio of socially owned land.

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[1] The term "social ownership" will be used as a general term that also includes land that is in *state* ownership, since in most cases any clarification is not of practical importance. Clarification will be provided where deemed necessary by the authors. The term stems from the notion that the most important goods should belong to all members of the social community (Orlić 1969, 197).

[2] Law on Changes and Amendments of the Law on Basis of Ownership and Proprietary Relations, *Official Gazette of the FRY* 29/96.

2. HISTORY OF THE OPTION OF ACQUIRING OWNERSHIP THROUGH USUCAPIO OF SOCIALLY OWNED LAND

In order to provide a clearer picture, it is important to briefly present the historical development of the concept of the impossibility of acquiring ownership through usucapio of socially owned land.

First of all, an important regulation in this regard is the Law on Basis of Ownership and Proprietary Relations (ZOSPO), which entered into force on 1 September 1980.[3] According to Article 29 of the original text of the ZOSPO, the right of ownership of socially owned property cannot be acquired through usucapio. Therefore, the ZOSPO introduced a general prohibition on the possibility of acquiring the right of ownership through usucapio, in the sense that it applied to all socially owned property.[4] Such a ban was justified by the need to protect social ownership, which was considered "the most important form of ownership" (Stojanović, Pop-Georgiev 1983, 81).

However, new times brought new "customs". With the 1996 amendments to the ZOSPO, the provision of Article 29 was removed.[5] This made it possible to acquire the right of ownership through usucapio of socially owned property, both movable and immovable. This opened up a number of questions in court practice, both in terms of the way in which possession

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[3] Law on Basis of Ownership and Proprietary Relations (ZOSPO), *Official Gazette of the SFRY*, 6/80, last amended 115/2005 – other law.

[4] Prior to the adoption of the ZOSPO, with regard to socially owned movable property, the accepted understanding was that it was possible to acquire property rights through usucapio, but with the passage of twice the period of 6 years. See the principal opinion of the Federal Supreme Court adopted at the session on 4 April 1960 (Ralčić 1983, 51). However, the ZOSPO introduced a general prohibition on acquiring property rights through usucapio, including movable property, which caused a lot of criticism in theory (Stojanović, Pop-Georgiev 1983, 82; Vodinelić 1981, 386ff).

[5] In Croatia, this was done in 1991, with the adoption of the Law on the Adoption of the ZOSPO. In Slovenia, it was disputed whether the prohibition on acquisition was lifted in 1997, when the Law on the Privatization of Socially Owned Property was adopted, or in 1989, when Constitutional Amendment No. 9 to the Constitution of the Republic of Slovenia was adopted, which provided that social, cooperative and private property are equal. The situation is similar in Republika Srpska, where it was unclear whether the acquisition of property rights by holding socially owned property was only enabled in 2010, when the Law on Real Rights of Republika Srpska came into force, or when Amendments 20–58 to the Constitution of the Socialist Republic of Bosnia and Herzegovina (*Official Gazette of the SR BiH*, No. 13/89) and Amendments 59–80 to the Constitution of the SR BiH (*Official Gazette of the SR BiH*, No. 21/90) were adopted, which, among other things, introduced equality of all forms of ownership rights (Povlakić 2019 304ff).

is qualified as lawful and bona fide, and in terms of the question of whether the time that elapsed before the introduction of the general prohibition can be included in the period for usucapio, but also the time while the property was privately owned during the prohibition period, which will be discussed further in the paper.

What is indisputable is that during the period from 1 September 1980 until the ZOSPO amendments entered into force on 4 July 1996, there was no possibility of acquiring the right of ownership by usucapio of socially owned property.

But what about the period prior to the ZOSPO entering into force?

It is not possible to provide a single answer, due to the fact that this issue was not regulated by law in a comprehensive and uniform manner.

Article 931 of the 1844 Serbian Civil Code (SGZ)[6] allowed for the possibility of acquiring property rights through usucapio of state (municipally) owned property, with a 36-year period required for acquisition.[7] A similar provision existed in Article 1472 of the General Civil Code, with a slightly longer period of 40 years.

However, the Law on the Invalidity of Legal Regulations Adopted Before 6 April 1941 and During the Enemy Occupation[8] was passed in 1946, providing the basis on which all legal regulations that were in force on 6 April 1941 lost their legal force. As a result, only the application of the rules of pre-Second World War law was possible, unless they contradicted the new order.[9]

Therefore, the question is whether the application of the SGZ rule on the acquisition of property through usucapio of socially owned land be in accordance with the new order.

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[6] The Serbian Civil Code, *Official Gazette of the Kingdom of Yugoslavia,* 146/30 и 281/31 *https://www.harmonius.org/sr/pravni-izvori/jugoistocna-evropa/privatno-pravo/srbija/Srpski_gradjanski_zakonik_1844.pdf*, last visited July 30, 2025.

[7] The period of the Balkan Wars and the First World War was not included in the deadline, which, according to the 1920 Law on the State of Moratorium, amounted to 7 years, 1 month and 18 days (Ralčić 1983, 50).

[8] Law on the Invalidity of Legal Regulations Adopted Before 6 April 1941 and During the Enemy Occupation, *Official Gazette of the FPRY*, 86/46.

[9] Art. 4 para. 1 of the Law on the Invalidity of Legal Regulations Adopted Before 6 April 1941 and During the Enemy Occupation.

Before answering this question, it is important to mention that prior to the ZOSPO entering into force, an explicit prohibition of the possibility of acquiring ownership through usucapio of socially owned agricultural land only with regard to agricultural land, since the enactment of the 1959 Law on the Utilization of Agricultural Land.[10] However, prior to 1959 such an explicit prohibition did not exist. Regarding forest and construction land, such a prohibition did not exist prior to the ZOSPO.[11]

So, is it possible to apply the rules of prewar law due to the absence of explicit rules on the possibility of acquiring ownership through usucapio of socially owned land?

Considering the prevailing understanding in theory (Gams 1974, 265–266; Ralčić 1983, 49–50) and the judicial practice of that time,[12] a negative answer is inevitable. The Federal Supreme Court emphasized, "Given the provisions of Article 16 of the Constitution of the Federal Republic of Yugoslavia and Article 1 of the Law on the Transfer of Land and Buildings, social ownership of real estate cannot cease and real estate cannot be transferred to private ownership based on usucapio. The legal rule on the acquisition of property through usucapio, contained in the laws that were in force on 6 April 1941, cannot be applied in relation to real estate that is socially (formerly state) owned."[13] Such an understanding stems from the more general rule that ownership of socially owned property can be acquired only in a manner prescribed by law (Simonetti 2008, 35). The very trading of socially owned property was quite limited.[14] It was considered that this was not in accordance with the constitutional order, that it was imperative to protect social ownership, and that the possibility of acquiring ownership, which was rather limited, in particular by the rule on the agrarian maximum, should

[10] See Art. 112 Law on the Utilization of Agricultural Land (ZIPZ), *Official Gazette of the FPRY*, 43/59. On the criticism of two exceptions, see Simonetti 2008, 33.

[11] An exception was the Law on Forests, *Official Gazette of the Socialist Autonomous Province of Kosovo,* 10/77, Art. 8. For the Croation law see Simonetti 2008, 34ff.

[12] See the decisions of District Court in Kraljevo, P. No. 544/72, 7 February 1975; Supreme Court of Serbia (VSS), Gž. 2758/77; Supreme Court of Kosovo, Gž. No. 465/78,18 January 1979 (Ralčić 1983, 55–57).

[13] Federal Supreme Court, 18 October 1957 (Stojanović, Pop-Georgiev 1983, 82, translated by author).

[14] See, e.g., the 1954 Law on Land and Buildings Transfer; the ZIPZ; the Law on Associated Labor, *Official Gazette of the SFRY,* 53/1976. The trading of agricultural and forest land, even when it was privately owned, was also limited first on the side of the acquirer, by the legal maximum, and then by the legal right of preemption in favor of agricultural and forest organizations – the aim was to have as much land as possible in social ownership (Arandjelović 1973, 10).

be limited only to cases prescribed by law. Private property was therefore not seen as an equal form of property in relation to social ownership. The privileging of social ownership can be seen as early as the 1946 Constitution of the FPR of Yugoslavia. It stipulated that “there cannot be large land holdings in private hands on any basis” and that “the maximum of private land holdings is determined by law.”[15] Hence the obstacle to acquiring ownership of socially owned land (Simonetti 2008, 29). Although private ownership of land remained, albeit to a very limited extent, it lost much of its content and ownership powers. It practically became personal, only to the extent that it satisfied the personal needs of the owner (Aranđelović 1973, 9).

Since even stricter rules applied, in the case of forest and construction land the acquisition of ownership through usucapio was not considered possible,[16] although such a rule was not explicitly prescribed by law until 1980.

However, one thing remains unclear: if the ownership of socially owned land could be acquired by derivative means, in cases prescribed by law and with respect to the rule on the agrarian maximum, why the acquisition through usucapio was also not considered possible, with respect to the legal rules (especially the aforementioned rule on the agrarian maximum) (Vodinelić 1979, 414–415)? It may be concluded that usucapio was not regarded as an equal mode of acquiring ownership.

At the end of this relatively brief historical overview, it is useful to keep in mind that, in the case of land, the transition from the private to social ownership did not take place in one step nor on the basis of a single regulation. While the situation is somewhat simpler with regard to construction land, which was nationalized to a large extent through the 1958 Law on the Nationalization of Rental Buildings and Construction Land[17] and subsequently mostly converted from agricultural to construction land, the

[15] Art. 19 of the Constitution of the Federative People’s Republic of Yugoslavia (FPRY), adopted on 31 January 1946.

[16] VSS, Rev. 1893/98, 18 March 1999, which states that the provision of the ZIPZ was applied accordingly to forest land (Krsmanović 2001, 76–77); VSS, Rev. 1548/05, 13 April 2006, *IngPro,* and VSS, Rev. 4939/99, 24 November 1999 (Krsmanović 2001,75); Supreme Court of Croatia, Gzz-7/81, 9 December 1981 (Ralčić 1983, 59).

[17] Art. 1 of the 1958 Law on the Nationalization of Rental Buildings and Construction Land, *Official Gazette of the FPRY*, 52/58 and 24/59. According to Art. 39 para. 1, the previous owner had the right to use the land free of charge or to provide it for use with or without compensation. This enabled the transfer of the right of use.

situation with regard to agricultural and forest land is more complicated because the transition occurred gradually, over the course of decades. The transition began in 1948, based on the Law on Agrarian Reform and Internal Colonization,[18] but continued through a number of different legal regulations,[19] which stipulated, among other things, that agricultural or forest land owned by a specific owner in excess of a certain maximum would become social ownership. Therefore, in order for such an (involuntary) transition to occur, it was necessary to determine for each specific case whether the legal conditions were met, and whether the registration in the real estate registers was carried out based on an individual legal act in each case. Therefore, it is crucial to examine at what point the transition occurred and whether there was an adequate legal basis for it.

3. THE CONDITIONS FOR ACQUIRING OWNERSHIP RIGHTS OF SOCIALLY OWNED LAND THROUGH USUCAPIO

As shown, Article 29 of the 1980 ZOSPO contained a provision by which the legislator prohibited the possibility of acquiring socially owned property through usucapio.[20] The 1996 amendments to the ZOSPO removed that

[18] Law on Agrarian Reform and Internal Colonization, *Official Gazette of the People's Republic of Serbia,* 5/48, 11/49, and 34/56.

[19] These are, among others, the Law on the Agricultural Land Fund of Social Ownership and the Allocation of Land to Agricultural Organizations, *Official Gazette of the FPRY*, 22/53, and *Official Gazette of the SFRY*, 10/65; the Law on the Transfer of Land and Buildings; the 1965 Law on Forests; the Law on the Conversion of Social Ownership of Agricultural Land into Other Forms of Ownership, *Official Gazette of the RS*, 49/92, 54/96, and 62/2006 – other law.

[20] When it comes to state ownership, the possibility of acquiring ownership is indisputably excluded for certain properties even today, regardless of the method of acquisition (Simonetti 2008, 30). The Law on Public Property, *Official Gazette of the RS*, 72/2011, last amended in 94/2024, explicitly stipulates that it is not possible to acquire ownership of natural resources and goods in general use, publicly owned networks, water land and facilities, cultural facilities, public property used by state authorities to exercise their rights and duties, and real estate used by healthcare institutions from the Healthcare Institution Network Plan (Arts. 9–17). Court of Appeal in Kragujevac, Gž. 6815/2018, 4 July 2019, *ParagrafLex*; Court of Appeal in Nis, Gž. 5715/17, 5 July 2018, *IngPro*; Court of Appeal in Kragujevac, Gž. 2571/2022, 16 November 2022, *ParagrafLex*; the Supreme Court, Rev. 3191/23, 9 October 2024, *IngPro;* Commercial Court of Appeal in Belgrade, Pž. 3835/18, 25 December 2018, IngPro; Commercial Court of Appeal in Belgrade, Pž.515/19, 25 March 2021, *IngPro*.

However, when it comes to other state owned land, it can in principle be the subject of acquisition of ownership through usucapio, if the legal conditions are met.

provision, which finally enabled such acquisition. The legislator did not dedicate special regulations to this case of usucapio,[21] which means that the general rules on ordinary and extraordinary usucapio apply. Thus, Article 28 para. 2 ZOSPO stipulates that "a bona fide and lawful possessor of an immovable property, over which another has ownership, acquires the right to that property by holding it for 10 years", while para. 4 stipulates that "a bona fide possessor of an immovable property, over which another has the right of ownership, acquires ownership by holding it for 20 years."[22]

When discussing the conditions for acquiring ownership, we mean the qualities of ownership and the deadlines or periods of time during which the possessor had peaceable ownership. The ZOSPO defines the qualities of possession within Chapter V. Article 72 para. 1 stipulates that possession is lawful if based on a lawful basis necessary for acquiring ownership and if it was not obtained by force, fraud or abuse of trust.[23] *Argumentum a contrario*, possession would be unlawful if it has no legal basis or has an invalid legal basis, or a legal basis that is not suitable for acquiring the right that is being exercised (Popov 2011, 112). Article 72 para. 2 defines bona fide possession as one where the possessor does not know or cannot know that the property does not belong to them.

The examination of legality and good faith, as qualities of possession, has caused certain dilemmas in practice with regard to socially owned land. This is just one of the reasons why we consider it appropriate to devote attention to the analysis of these qualities, especially in light of their specificity when it comes to possession of socially owned land. When it comes to peaceable possession, as a necessary quality of possession, we will not pay special attention to it. It is enough to emphasize that in any legal proceedings it is necessary to simply state that peaceable possession existed at all times, from the moment of entering into possession until the expiration of the usucapio period, i.e., that no one has successfully challenged it.[24]

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[21] According to Art. 159 para. 4 of the Croatian Law on Property and Other Real Rights, special rules apply to the acquisition of ownership of state owned property (including property owned by local and regional self-government units), churches and other legal charities; as a general rule it takes twice as long.

[22] Translated by author.

[23] There has been criticism in theory of Art. 72 ZOSPO (Dolović Bojić 2019, 171–172).

[24] Court of Appeal in Novi Sad, Gž. 3580/2018, 27 September 2018, *ParagrafLex*; Court of Appeal in Belgrade, Gž. 215/24, 24 January 2024, *IngPro.*

4. THE SPECIFICITY OF LEGALITY AS A QUALITY OF POSSESSION IN THE ACQUISITION OF OWNERSHIP THROUGH USUCAPIO OF SOCIALLY OWNED LAND

The usual understanding of the concept of lawful possession raises the question whether there is place for the application of the institute of usucapio of socially owned land. Namely, if lawful possession must be based on a legal act suitable for acquiring *ownership*, the question is how to apply that rule when it comes to socially owned land. In other words, if the possessor acquired possession of socially owned land, but not on a legal basis suitable for acquiring ownership, could it be considered that he has lawful possession? If we assume that the answer is negative, this means that the rules on ordinary usucapio cannot be applied to the acquisition of ownership through usucapio of socially owned land. However, the very fact that the legislator enabled the acquisition of ownership of socially owned properties by ordinary or extraordinary usucapio, indicates that it is necessary to view the concept of lawfulness differently here.

Namely, in practice, it was the right of use that was being acquired and transferred. Therefore, the only correct reasoning would be that lawful possession, in the context of the possibility of acquiring ownership through usucapio of socially owned land, implies possession based on an act suitable for acquiring the right of use of a specific socially owned property. The right of ownership could not be acquired and transferred, but only the right of use, allowing the holders of that right of use, which was clearly a surrogate for the right of ownership at that time, to prove that over time they acquired the right of ownership by applying the usucapio rule.[25]

So, although it is hard to imagine today, socially owned properties were traded. As explained in the theory, only economic (and not legal) transfer of ownership was being carried out, i.e. the transfer of objects in social ownership while the social ownership itself did not lose its character (Trifunović 1999, 91). In other words, the right of ownership was not traded,

[25] This is supported by the fact that both in our country and in the countries in the region, laws were passed on the basis of which the right of use was converted into the right of ownership. See, for example, the Law on Planning and Construction from 2009, the Law on the Conversion of the Right of Use into the Right of Ownership of Construction Land with a Fee from 2015. For the law of Slovenia, see, for example, *Zakon o lastninjenju nepremičnin v družbeni lastnini* (Law on the Privatization of Socially Owned Real Estate) from 1997. For the law of the Republika Srpska, see the Law on Real Rights, Art. 324, which regulates the conversion of the right of use, management and disposal into the right of ownership.

only the right of use, but economically the same effect was achieved.[26] This can also be concluded from the fact that there was a tax on the transfer of absolute rights, and that the transfer contracts themselves were often called sales contracts (although the right of use, not ownership, was being transferred). Such terminology is also accepted by domestic courts, which in their decisions state that “the plaintiff, as a bona fide and lawful possessor of agricultural land, which they acquired by a gift contract [...] for which ownership by the Republic of Serbia is registered.”[27] Similar reasoning can be found in Montenegrin practice.[28]

It could therefore be concluded that although socially owned land legally belonged to the Republic of Serbia, it economically belonged to the legal entity with the right of use. In this sense, the right of use was seen as a surrogate for the right of ownership[29] and the holder of the right of use was seen as the owner, although legally this could not be the case.

Therefore, the lawfulness of possession may depend on the existence of the right of use. In a situation where the right of use arose by force of law or by decision of a competent state body, it is indisputable that lawfulness exists. In the case of a contract with a state body, the conditions for its formation and validity should be reexamined, with the expectation that few cases of unlawful possession would be identified.

[26] “It is difficult to imagine how an entity, for which it is explicitly stated in constitutional documents that it is not the owner of a socially owned property, can legally sell that property to another entity, and not only that, but also for that other entity to acquire the right of ownership of the sold property, which the transferor did not have. Here, therefore, we use a legal construction. Namely, in order to enable the intended use of property, social enterprises are given the right to trade property, with the possibility of it changing its user, either collective or individual (e.g., in circumstances when an organization is liquidated, there is the possibility of putting socially owned properties up for public sale, monetizing them in order to settle obligations to the company and to creditors)” (Ilić-Popov 1991, 804, translated by author).

[27] Court of Appeal in Novi Sad, Gž 3417/2015, 18 February 2016, *IngPro*, translated by author.

[28] The court stated that the Agreement on Transfer of Ownership was concluded for the purpose of donating a cadastral plot that was registered as social ownership of the Municipality of Kotor. Higher Court in Podgorica, Judgment Gž 1005/2020, 6 April 2021, *https://www.sudovi.me/vspg/odluka/430589*, last visited January 26, 2026.

[29] The right of use does not only imply the authorization of use, but to a certain extent also the authorization of legal disposal (Jelić 2013, 123).

It is important to note that there are also situations in which the land in question was acquired while it was in private ownership but later nationalized and the possessor was never dispossessed.[30] In such cases, it should be deemed that subsequent nationalization does not affect the lawfulness of possession.

There were also situations in which a possessor acquired possession of socially owned land on the basis of an exchange, but the registration of private ownership never occurred, for various reasons.[31] Even in these cases, lawful possession suitable for acquiring ownership through usucapio should be indisputable.

Finally, it should be mentioned that there are also numerous cases in which the possessor had neither the basis for acquiring ownership nor the right of use, because they were a former owner who was not granted the right of use because it had been granted to someone else, but it was the former owner, and not the holder of the right of use, who enjoyed a long-standing peaceable possession. In such cases, ownership can only be acquired by applying the rule on extraordinary usucapio since the legal basis for acquisition, i.e. the lawfulness of possession, clearly does not exist. However, we do not exclude the possibility that the former owner might have an alternative means of acquiring ownership, by applying the rule on restitution.

However, the analysis of a large number of decisions by Serbian courts indicates that the courts generally apply the rules of extraordinary usucapio when it comes to socially owned land. In this way, the courts avoid examining the existence and validity of the legal basis for acquisition.

However, we believe that when determining the lawfulness of possession of socially owned land, the courts should take into account not only cases where possession was acquired on a lawful basis suitable for acquiring *ownership* (which are situations where the land was subsequently nationalized) but also cases where possession was acquired on a lawful basis suitable for acquiring the *right of use* (which are situations where the land was socially owned at all times, from the moment the possessor entered into possession). As previously pointed out, in such cases the concept of lawfulness has a specific

[30] See, for example, Court of Appeal in Kragujevac, Gž. 1026/2010, 23 March 2010, *ParagrafLex*.

[31] See, for example, Court of Appeal in Belgrade, Gž. 7904/2019, 26 May 2021, *ParagrafLex*; Court of Appeal in Novi Sad, Gž. 4005/2013, 6 February 2014, *ParagrafLex*; Commercial Court of Appeal in Belgrade, Pž. 10781/21, 31 March 2022, *IngPro*.

meaning, since it is indisputable that ownership was not transferable, only the right of use, which, in turn, could be obtained not only by contract but also by decision of a competent state authority, inheritance, or force of law.

5. HOW GOOD FAITH IS ASSESSED IN USUCAPIO OF SOCIALLY OWNED LAND?

5.1. General Information on the Concept of Good Faith as a Condition for Acquiring Ownership Through Usucapio

The legislator considers the bona fide possessor to be someone who believes that they are the owner of the property.[32] This belief should be justified (Dolović Bojić, Dabić Nikićević 2024, 134).[33] This means that "the good faith of the possession is assessed according to objective circumstances, which influence the formation of awareness of the existence of the right of a person who holds another's immovable property, and which are such as to exclude the possibility of knowing that the property they hold is not theirs."[34]

Although the legislator starts from a unitary concept of good faith, it is generally accepted in theory that the fulfillment of this condition is nevertheless assessed differently depending on whether it is a case of extraordinary or ordinary usucapio.[35] For a possessor to be bona fide in the sense of the rule on ordinary usucapio, it is sufficient for them to believe that they have acquired the property from the owner. On the other hand, since

[32] Art. 72 ZOSPO.

[33] Judgment of the Higher Court in Podgorica, Gž 1005/2020, 6 April 2021, *https://www.sudovi.me/vspg/odluka/430589*, last visited January 26, 2026. The Montenegrin courts also emphasize that "the quality of good faith of a specific possession depends on whether the possessor's mistake about the right to possession is excusable or inexcusable [...], i.e., when the misconception that they are in possession of their own property, and not someone else's, occurred despite the fact that they used the objective standard attention required in the existing legal transaction in that direction, and not because they just thought, considered that the property he possesses is his, so that a possessor who not only knows that the property they had in their possession is not theirs, but also one who, admittedly, does not know this, but could have known it according to the existing circumstances if they had applied standard diligence in that direction, is considered to be in bad faith" (translated by author).

[34] Supreme Court of Cassation (VKS), Rev. 6796/2024, 9 May 2024, *IngPro*, translated by author.

[35] For more information on the concept of good faith in ordinary and extraordinary usucapio, see Stanković, Orlić 1999, 87–89, 91.

the lawfulness of the possession is not required in the case of extraordinary usucapio, the existence of good faith requires not only a justified belief that the object was acquired from the owner, but also a justified belief in the existence of a lawful basis suitable for acquiring ownership.

5.2. Specific Understanding of the Concept of Good Faith as a Quality of Possession in the Acquisition of Ownership Through Usucapio of Socially Owned Land

Strictly adhering to the understanding of the concept of good faith in the sense of the possessor's belief that he is the owner, the institute of usucapio of socially owned property would apply only to situations in which the land was privately owned and subsequently nationalized. Even then, this would be reduced to an even smaller number of cases, since the rules on subsequent bad faith would have to be applied.[36] In other words, it would only apply to cases where the possessor did not subsequently learn that conversion into social ownership had occurred.[37]

The controversial question, therefore, is how is good faith assessed when acquiring ownership through usucapio of socially owned land. Should it be assessed in the same way as when acquiring ownership through usucapio when the land is privately owned, or should it be assessed differently due to the specificities of the social ownership?

Namely, the questions arise whether the possessor can be bona fide if the Republic of Serbia has been registered as the owner at the time of the acquisition of the possession or during the possession, and whether the allegations of a part of the judicial practice, according to which the possessor is not bona fide since they knew that they were not the owner of the disputed property, are well-founded. In this sense, in one decision the highest court considered that "the plaintiff does not have bona fide possession of the

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[36] Subsequent bad faith requires that the possessor became aware of the facts that affect their good faith. Court of Appeal in Belgrade, Gž. 7650/2017, 10 January 2018, ParagrafLex; Court of Appeal in Belgrade, Gž. 215/24, 24 January 2024, *IngPro.*

[37] If this occurred by enactment of a law, this fact could not be considered unknown. The same applies in cases where social ownership was publicly registered and the possessor learned of it.

disputed immovable property because they must have known that it was not theirs since it was granted to them by the decision [...] as the possessor of the right of use, and not of ownership."[38]

It would be too strict and illogical to consider the possessor in bad faith if they knew that they were not the owner, because in this situation it is indisputable that they cannot be the owner. In the case of socially owned land, it was not possible to transfer the ownership, but only the right of use. However, the economic transfer was carried out because economically the property belonged to the legal entity that had the right of use (Trifunović 1999, 91). In this sense, some decisions of the highest court state that the defendant's successors "*sold* the right to use the subject plot to the plaintiff,"[39] and that the contractors concluded sales contracts involving the subject property, although it is indisputable that it is socially owned land.[40]

Therefore, when analyzing legal situations from the time of the monopoly of social ownership, it can be concluded that the judicial practice equated the right of ownership and the right of use. In this sense, the Federal Court took the position that "in order for someone to acquire the right of ownership, or rather, become the holder of the right of use of real estate located in the area where land registers are kept, it is necessary to have the prescribed method of acquisition and to have achieved the registration of their right in the land register, and it is not enough to have only a legal basis for acquisition."[41]

The question arises as to how the courts assessed good faith if we accept the view that a possessor who knows that they are not the owner (but rather the user) is also bona fide, taking into account the monopoly of social ownership. This is, therefore, a more flexible understanding of the concept of good faith, and the courts have tried to find different ways to justify the good faith of the possessor in specific cases. Thus, in one of its decisions, the Supreme Court of Serbia considered that the possessor of a socially owned

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[38] VKS, Rev. 4475/2021, 23 December 2021, *IngPro*, translated by author.

Similar reasoning can also be found in Croatian judicial practice. Namely, in the decision of the Supreme Court of the Republic of Croatia, Rev. 1009/1996, 27 August 1997, the reasoning was that the knowledge of the possessor that it was a socially owned immovable property, which was only given for use, excludes the good faith of the possessor in the sense of acquiring the property through usucapio (Brežanski 2009, 613).

[39] For instance, VKS, Rev. 3457/2019, 26 November 2020, *IngPro*, translation and emphasis by author.

[40] VKS, Rev. 7890/2021, 20 April 2022, *IngPro*.

[41] Federal Court, Gzs. 6/74, (Supreme Court of Serbia 1986, 13) translated by author.

plot of land was bona fide because they possessed the disputed plot as their own, despite the fact that they must have known that the plot, which they received as compensation for another plot in the process of consolidation of parcels, was socially owned and that they had no reason to believe that they are the owner of it.[42] In another decision, the Supreme Court similarly reasoned that the plaintiff could be a bona fide possessor despite the fact that the land was socially owned, justifying good faith by the fact that the plaintiff had a reasonable belief that they were the owner since they had acquired it through an oral sales contract on the basis of which a price was paid and possession was taken, and the seller, as the legal predecessor, showed the plaintiff the sales contract concluded with the agricultural cooperative as the basis on which they became the owner of the plot that they had sold.[43] Another of the many examples in favor of the position that one can be bona fide even though the Republic of Serbia is registered as the owner in the public registry,[44] is the decision of the Supreme Court, with the explanation that "the plaintiff's legal predecessors justifiably believed that they had acquired the right of ownership of the disputed cadastral plot in the 1965 agreement and the exchange of real estate, because they had obtained it in the process of consolidation of parcels, and therefore justifiably considered that for the transfer of ownership it was sufficient to actually exchange and hand over the plots."[45] Finally, the Supreme Court's ruling took the position that the possessor is bona fide "given that they had no reason to suspect that the property they possessed was not theirs, taking into account their aunt's will to give them the cadastral plot as a gift."[46]

Therefore, it is necessary to understand the concept of good faith more flexibly, because the opposite would lead to the absurd conclusion that the institute of usucapio cannot be applied when it comes to social ownership, which would be contrary to the will of the legislator. Also, one could reason that the mere reliance on a legal norm that allows the acquisition of property

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[42] VSS, Rev. 6745/2023, 28 June 2023, *IngPro*.

[43] VKS, Rev. 7890/2021, 20 April 2022, *IngPro*.

[44] See for example: Court of Appeal in Belgrade, Gž. 2228/23, 13 December 2023, *IngPro*; Court of Appeal in Niš, Gž. 1654/2017, 2 March 2017, *ParagrafLex*; VKS, Рев. 445/2017, 21 September 2017, *ParagrafLex*; Court of Appeal in Belgrade, Gž. 2549/2021, 27 October 2021, *ParagrafLex*; Court of Appeal in Belgrade, Gž. 6397/2022, 23 February 2023, *ParagrafLex*.

[45] VKS, Rev. 3238/2021, 20 October 2012, *IngPro*, translated by author. Similar: Court of Appeal in Belgrade, Gž. 5994/2022, 13 December 2022. *ParagrafLex*.

[46] VKS, Rev. 15065/2022, 25 January 2024, *ParagrafLex*. In this sense, the Supreme Court of Montenegro also takes a position, Rev. 589/2022, 21 February 2024, *https://sudovi.me/vrhs/odluka/*542757, last visited January 27, 2026.

through usucapio of socially owned land makes some possessors bona fide in the sense that by interpreting it they come to the conclusion that they are "on the right track" to becoming owners.

5.3. (In)Dependence of the Concept of Good Faith from the Concept of Legality

The strictest understanding of the concept of good faith, motivated primarily by the maxim that "ignorance of the law excuses not", would be that good faith exists both when there is a legal basis for acquiring ownership/ right of use and when the possessor is registered as the holder of ownership/ right of use in the public register.[47] The first requirement, however, may provoke criticism: the existence of a lawful basis is not a condition of good faith but of lawfulness. However, assuming that a person is considered bona fide if they believe that they are the owner, then the question arises as to how can one believe they acquired ownership if the legal basis is not valid, since it does not meet all the requirements, e.g., those relating to form.[48] If someone believes that they are the owner, then they must be registered as the owner and have the legal basis for acquisition in accordance with the requirements of validity prescribed by applicable legal provisions, since "ignorance of the law excuses not". Today, when there are public notaries, this cannot happen in principle in the case of real estate transactions, but in the so-called old cases it is a very common occurrence.

The problem we create with such reasoning is that we narrow the field of application of the institute of usucapio, and especially that we question the possibility that the possession can be bona fide but unlawful, which is possible according to the ZOSPO since there are rules on both ordinary and extraordinary usucapio. So, although we are more inclined to the reasoning that requires stricter criteria for the existence of good faith, we also understand different court decisions, taking into account the given reasons.

This is particularly problematic when applying the rules on usucapio of socially owned land, since this is where we may have a number of "problems" in the field of the existence and validity of the legal basis for acquiring the right of use, and if we were to apply the aforementioned connection between

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[47] The exception exists when it was not possible to make an entry in the public register.

[48] In this sense, the court takes the position that a contract that does not meet the formal requirements may render the possession not only unlawful but also in bad faith. See Court of Appeal in Novi Sad, Gž 698/2016, 20 April 2016, *ParagrafLex*.

lawfulness and good faith, in terms of a stricter understanding of the concept of good faith, the field of application of this institute would be significantly narrowed.[49]

However, the key to solving the problem could then be found in the division into ordinary and extraordinary usucapio. Namely, if it is a question of ordinary usucapio, then lawfulness is necessarily required, and the possessor's position regarding the existence and validity of the legal basis is completely irrelevant. In order to be bona fide, the possessor is required to believe that the predecessor is the owner, and this is examined in the field of the state in the public books. True, if there are no public books, the matter is more complicated, but then the concept of good faith itself is understood more flexibly. In the case of extraordinary usucapio, however, good faith also includes lawfulness, and it is important that the possessor believes both that he acquired from the owner and that he has a lawful basis for acquisition. It would therefore be sufficient for him to simply believe that, for example, an oral[50] or uncertified[51] contract was sufficient to acquire ownership. Otherwise, if we were to assume that "ignorance of the law excuses not", and that the possessor cannot believe that they are the owner, we would end up in a situation where we would be preventing the application of extraordinary usucapio in cases without any valid basis for acquisition – in other words, if the possession is not lawful, it cannot be bona fide.

Therefore, we would limit the application of the rules on extraordinary usucapio to situations of so-called seizure of another's property, i.e., to situations in which there is no basis for acquisition and consequently no legality, but where, for some reason, good faith nevertheless exists, because the possessor has reason to believe that they are the owner. In this sense, the Supreme Court of Cassation stated in one of its decisions that the condition of good faith was met in a case where the plaintiff's mother could not have known that the disputed plot was not included in the plots that were

49 Thus, in the same case, we see different positions in the judgments of courts of different instances. We believe that both positions can be justified, as well as criticized. Namely, the first-instance court states that "the plaintiff was aware of the fact that he did not conclude a written gift agreement, so the contract never produced legal effects and the plaintiff could not reasonably believe that he became the owner of that plot of land". On the other hand, the second-instance court and the highest court reason differently, and they believe that "the conclusion of a gift agreement does not affect the good faith of the possessor, but the lawfulness of the possession". See. VKS, Rev. 15065/2022, 25 January 2024, *ParagrafLex*.

50 Also, Court of Appeal in Niš, Gž. 1654/2017, 2 March 2017. and VSS, Rev. 489/2000, 5 April 2000.

51 Also, Court of Appeal in Kragujevac, Gž 1993/2022, 1 November 2022.

assigned to her by the decision, since the disputed plot was located right next to one of the three plots that she owned, and into which possession the geometer put her. The court added that the plaintiff's mother, as well as the plaintiff, could not at any time doubted her right of ownership of the disputed plot, since they had been using it, as well as the other three plots, the entire time, and no one had interrupted them.[52]

The question here is whether we will go the route of a more flexible understanding of the concept of good faith in order to expand the field of application of the institute of usucapio – which is especially appropriate when it comes to resolving so-called old cases – or give importance to the principles of the real estate cadaster, and above all to the principle of registration and confidence in it.

However, as previously mentioned, when it comes to usucapio of socially owned land, the courts generally apply the rules on extraordinary usucapio and thus avoid examining lawfulness as a quality of usucapio. This is logical, since in a large number of cases it remains unclear whether a lawful basis exists. Bearing this in mind, it is completely understandable why courts generally assume that the possessor can be bona fide even when they must have known that the conditions necessary for the validity of a legal transaction were not met, i.e., due to the failure to meet the formal requirements. In most decisions, the courts consider the possessor bona fide nonetheless, requiring that the 20-year period of peaceable usucapio has elapsed. It is our belief that such a court stance is quite justified in the case of usucapio of socially owned properties, since a stricter understanding of good faith (however legally perfect it may be) would render the possibility of applying the institute of usucapio moot.[53]

[52] VKS, Rev. 877/2020, 28 May 2020, *https://www.vrh.sud.rs/sr/%D1%80%D0%B5%D0%B2–8772020–31146.*, last visited July 30, 2025.

[53] In this sense, the Court of Appeal in Niš also reasons, Gž 1732/2019, 21 March 2019: "*It follows from the case file that the plaintiff concluded a contract for the sale of the garage on 15 October 1996 and that he immediately entered into its possession. In a situation ... when he claims ownership only of the land under the building, the first-instance court correctly determines that he has this right in relation to the defendant as the owner of the entire plot, on the basis of peaceable and bona fide ownership after the expiration of a period of 20 years. Especially considering the reasons given by the first-instance court regarding the possibility of acquiring ownership through usucapio also of real estate in state ownership...*". (translated by author)

6. CALCULATION OF TIME FOR ACQUISITION OF OWNERSHIP THROUGH USUCAPIO OF SOCIALLY OWNED LAND

6.1. Introduction

The calculation of time limits for acquiring ownership through usucapio of socially owned land is not entirely straightforward: a number of uncertainties have arisen, stemming from the introduction and subsequent abolition of the prohibition on acquiring ownership through usucapio of socially owned property.

The principal uncertainty concerns the moment from which the period of 10 or 20 years for acquiring ownership through usucapio of socially owned land begins to run. More specifically, the question is whether the period for usucapio also includes the time that elapsed prior to the entry into force of the 1996 amendments to the ZOSPO.

In the search for an answer to this question, it is important to distinguish between: (a) cases in which social ownership existed continuously from the beginning of the possession; (b) cases in which private ownership existed at the beginning of the possession, but subsequently transitioned to social ownership. In the latter situation, two scenarios are possible: the period required for usucapio had expired prior to the transition from private to social ownership, but this was not promptly determined; or the period for usucapio had been running for some time during private ownership, but insufficient to acquire ownership.

6.2. Calculation of Time in Cases in Which the Land Had Been in Social Ownership Throughout the Entire Period of Possession by the Possessor and Their Legal Predecessors

The first group of cases is legally simpler.[54]

As previously mentioned, the prohibition on acquiring ownership through usucapio of socially owned land effectively existed from 6 April 1941 until the 1996 amendments to the ZOSPO, whether on the basis of explicit statutory prohibition or interpretations entrenched in judicial practice.

[54] See, e.g., VSS, Rev. 6745/2023, 28 June 2023, *IngPro*; VKS, Rev. 3238/2021, 20 October 2021, *IngPro*; Court of Appeal in Novi Sad, Gž. 1122/11, 6 April 2011, *Intermex*.

However, even with respect to cases where the land was socially owned during the possessor's entire possession, the question arose whether the removal of Article 29 ZOSPO was meant to validate the earlier state of possession, i.e., whether the period for usucapio also includes the time that had elapsed prior to the entry into force of the 1996 amendments. Similar questions also arose in other former Yugoslav states.[55] Serbian courts gave

[55] The original version of the Croatian Law on Ownership and Other Real Rights (Zakon o vlasništvu i drugim stvarnim pravima – ZVDSP) (Art. 388 para. 4) provided that, for the purpose of acquiring ownership of immovable property through usucapio, "the period of possession elapsed prior to 8 October 1991 shall also be counted for immovable property that, on that date, was in social ownership" (translated by author). This formulation implied that the time from 6 April 1941 until 8 October 1991 was to be taken into account in the same manner as the time before 6 April 1941 and after 8 October 1991. This provision, however, was annulled by the Constitutional Court of the Republic of Croatia. In its decision, the Court emphasized, inter alia, that laws cannot be applied retroactively; that retroactive application would place in an unfavorable position those who held certain rights to immovable property (without possession) but did not protect them, since they reasonably believed that ownership could not be acquired through usucapio; and that the contested provision would in effect permit acquisition of ownership through usucapio even before the prohibition had been lifted. Accordingly, the final text of the ZVDSP stipulates that, for immovable socially owned property, "the period of possession elapsed prior to that date shall not be counted" (translated by author) in calculating the time required for acquisition of ownership through usucapio (Simonetti 2008, 41; Brežanski 2009, 605).

The European Court of Human Rights (ECHR) also had the opportunity to address this issue, in the case of *Trgo v. Croatia* (ECHR Application No. 35298/04). The matter concerned land that had been confiscated in 1949, but the peaceable possession existed from 1953. The applicant filed a request to establish acquisition of ownership through usucapio prior to the Constitutional Court of Croatia declaring Art. 388 para. 4 ZVDSP unconstitutional. The court of appeal rejected the applicant's claim, the Constitutional Court subsequently dismissed the applicant's constitutional complaint, so they brought the case before the ECHR. The Court held that "the applicant, who reasonably relied on legislation, later on abrogated as unconstitutional, should not – in the absence of any damage to the rights of other persons – bear the consequences of the State's own mistake committed by enacting such unconstitutional legislation [...] the risk of any mistake made by the State authority must be borne by the State and the errors must not be remedied at the expense of the individual concerned, especially where no other conflicting private interest is at stake" (ECHR, *Trgo v. Croatia*, Judgment, 11 June 2009).

Moreover, the ECHR adopted the same position in cases where an action to establish ownership through usucapio was filed after the Constitutional Court had declared Art. 388 para. 4 unconstitutional, provided that the statutory period for usucapio had expired while that provision was still in force (Kontrec 2017, 588).

The Supreme Court of Slovenia, in decision VSRS:2010:II.DOR.172.2009, No. VS0013568, 18 November 2010, held that the 1989 adoption of Amendment No. IX to the Constitution of the Republic of Slovenia should be considered

a negative answer: as stated, the removal of Article 29 ZOSPO "did not mean to validate the state of possession prior to the removal with respect to the conditions and time limits for usucapio,"[56] but only *pro futuro*.[57] This follows from the prohibition of the retroactive application of laws.[58]

Nevertheless, it is indisputable that the foregoing applies only in cases where the land in question was socially owned throughout the entire period of possession, which may go as early as 6 April 1941 and as late as the abolition of the prohibition in 1996. However, this is usually not the case. As mentioned previously, the transition of private into social ownership and vice versa had been carried out over a lengthy period of time. This means that the moment of transition from private to social ownership was not

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as the commencement of the period for usucapio. At that time, equality was established between social, cooperative, and private property. See *https://www.sodnapraksa.si/?q=priposestvovanja%20lastninske%20pravice%20na%20nepremi%C4%8Dninah%20v%20dru%C5%BEbeni%20lastnini&database[SOVS]=SOVS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2010040815250117*, last visited November 21, 2025.

With regard to Republika Srpska, pursuant to Art. 344 para. 4 of the Law on In-Rem Rights (Zakon o stvarnim pravima), the period of possession during the time when regulations expressly excluding usucapio were in force cannot be counted as part of the time required for acquisition of ownership through usucapio of immovable socially owned property.

[56] VSS, Rev. 2722/2005, 13 April 2006, *IngPro*; VSS, Rev. 2318/07, 11 October 2007, *IngPro*, translated by author.

[57] In Serbian court decisions, one can see the argument that the ZOSPO "does not contain, in its transitional or final provisions, any rule providing for retroactive application, and therefore the periods for usucapio can only be calculated prospectively, as of the date of its entry into force." See, e.g: VSS, Rev. 2722/2005, 13 April 2006, *IngPro*; VSS, Rev. 2318/07, 11 October 2007, *IngPro*. (translated by author)

Nevertheless, it is debatable whether retroactive application would in fact have been possible even if the legislature had expressly provided for such a rule in the transitional or final provisions.

[58] In this regard, our court practice has also emphasized the argument that "the vested rights of earlier holders of such rights would thereby be jeopardized, since they would be placed in a less favorable position compared to other subjects, given that the law expressly provided that ownership could not be acquired through usucapio of socially-owned property. Consequently, the failure to demand that the possessor hand over immovable property cannot benefit the possessor during the period required for acquisition of ownership through usucapio, as this would be contrary to the principle prohibiting retroactivity. The removal of the provision prohibiting acquisition of ownership of socially owned land (Art. 29) does not amount to statutory validation, since the prohibition expressed therein was not of minor significance." See VSS, Rev. 4976/98, 15 September 1999 (Krsmanović 2001, 77, translated by author).

identical for all land within the present territory of the Republic of Serbia. It depended not only on the type of land (construction, agricultural, forest) but also on other circumstances that constituted the basis for the transition: for certain types of land (e.g., construction land) the transition to social ownership occurred directly by operation of law, whereas for others it was necessary for the competent authority to issue a decision. Therefore, it is necessary to determine in each specific case when exactly the transition from private to social ownership and vice versa occurred.

What should, therefore, be regarded as indisputable is that the period during which certain land was socially owned, prior to the 1996 amendments to the ZOSPO, cannot be counted in the time required for acquiring ownership through usucapio.

At the end of this section, it is worth noting – although with little practical significance – that uncertainty also existed regarding the exact moment the 1996 amendments to the ZOSPO entered into force. Namely, some court decisions mention 4 July 1996 as the crucial date,[59] some 7 July 1996,[60] and some even 3 August 1996.[61] Given that the ZOSPO was published in the *Official Gazette of the FRY* No. 29/96, on 26 June 1996, and that pursuant to Article 36 it entered into force on the eighth day following its publication, we can conclude that it entered into force on 4 July 1996.

6.3. Calculation of Time in Cases in Which the Possession of the Land Began Before its Transition to Socially Owned Property

The second group of cases is far more complex, consisting of the cases in which the regime governing the land shifted from private to social ownership (or vice versa) during the possession. Such cases were not uncommon and can further be divided into two subgroups. The first subgroup consists of cases in which the conditions for acquiring ownership through usucapio

[59] Court of Appeal in Novi Sad, Gž. 3580/2018, 27 September 2018, *ParagrafLex*; Court of Appeal in Belgrade, Gž. 5994/2022, 13 December 2022, *ParagrafLex*.

[60] Court of Appeal in Kragujevac, Gž. 1993/2022, 1 November 2022, *ParagrafLex*;

[61] Court of Appeal in Niš, Gž. 1732/2019, 21 March 2019, *ParagrafLex*; Court of Appeal in Novi Sad, Gž. 3417/2015, 18 February 2016, *ParagrafLex*; Court of Appeal in Belgrade, Gž. 8196/2013(3), 22 January 2014, *ParagrafLex*; Commercial Appellate Court, Pž. 7282/10, 17 February 2011, *IngPro*; VSS, Rev. 2318/07, 11 October 2007, *IngPro*; Commercial Appellate Court, Pž. 459/17, 17 January 2018, *IngPro*. This date is mentioned in the decision of the Constitutional Court, Už. 393/2011, 5 June 2014, *https://sirius.rs/cyr/praksa/nuLKIQ*, last visited July 30, 2025.

were met prior to the transition to social ownership. These are situations in which the possessor had possession for a period of time sufficient to acquire ownership through usucapio, while the land was still privately owned. However, there was a failure to establish, in due time, that ownership had already been acquired through usucapio before the land became socially owned. The second subgroup consists of cases in which the possessor had possession of the land for a period of time before it transitioned into social ownership, but that period was insufficient to acquire ownership through usucapio.

With respect to these situations, at least three questions arise: first and foremost, can the time that elapsed while the land was still in private ownership be included for usucapio; second, if such time can indeed be included, how can this calculation be carried out; and finally, how does the transition to the social ownership affect the calculation of time – does it mean the interruption or suspension of the elapsed time?

6.3.1. Should the Time that Elapsed Before the Land Transitioned into Social Ownership be Counted for Usucapio?

Serbian court practice contains many significant inconsistencies regarding this issue.

Some courts firmly maintain the position that "the period prior to 4 July 1996 cannot be counted in the time required for acquiring ownership through usucapio of socially owned immovable property."[62] It is worth noting that in many decisions regarding the acquisition of ownership through usucapio, the courts attach no significance to the moment when social ownership of the land was established or to whether (and how much) time had previously elapsed.[63] This fact is, therefore, considered irrelevant. However, there are

62 Court of Appeal in Novi Sad, Gž. 2792/2011, 21 March 2012, *IngPro*, translated by author. Similarly, see Court of Appeal in Belgrade, Gž. 2954/18, 25 May 2018, *IngPro*; Commercial Court of Appeal in Belgrade, Pž. 7874/14, 14 September 2016, *IngPro*; Court of Appeal in Novi Sad, Gž. 427/14, 2 April 2014, *http://bilten.osns.rs/presuda/sentenca?url=sticanje-prava-svojine-1*, last visited July 30, 2025: "*the periods for usucapio may only be calculated prospectively, beginning from the date of its entry into force. Therefore, in the present case, the period for usucapio is calculated from the date of entry into force of the amended law, namely from 4 July 1996.*"

63 Court of Appeal in Belgrade, Gž. 3604/22, 2 September 2022, *IngPro*. From the available text, it appears that the court did not attach significance to the fact regarding when the land transitioned into social ownership, although it was established that the possessor had acquired the parcel through an exchange more than 60 years prior to the time of the judgment.

decisions in which the courts did regard this fact as relevant, but that did not lead to a different outcome. In one such decision, the court miscalculated the time periods: instead of determining the moment when the land transitioned into social ownership and examining whether sufficient time had elapsed by then, the court erroneously treated as relevant the moment that the ZOSPO entered into force, because it introduced a general prohibition on acquiring ownership through usucapio of socially owned property.[64] This is incorrect for at least two reasons: first, the land could have been socially owned even before the ZOSPO entered into force, in which case the period prior to that should also not be counted in the period required for usucapio; second, the land could have been privately owned even after the ZOSPO entered into force, in which case it is in fact important to count in the period prior to the transition of the land into social ownership. In another decision, however, the Supreme Court of Serbia found that sufficient time had elapsed for acquiring ownership through usucapio before the transition to social ownership, but that this right had transitioned into the right of use.[65]

Finally, the Supreme Court stated that the removal of Article 29 ZOSPO meant that "this method of acquiring ownership is allowed, but when it comes to socially owned property, the period for usucapio begins to run from 4 July 1996, when the Law on the Amendments to the Law entered into force,"[66] and that it did not "validate or reinforce the previous state of possession, nor was ownership established on the basis of usucapio with respect to assets and objects that were in social ownership,"[67] because the "the transitional and final provisions contained no rule regarding its retroactive application, for which reason the periods for usucapio can be calculated only prospectively, as of the day of its entry into force."[68]

Similarly, Court of Appeal in Novi Sad, Gž. 427/14, 2 April 2014, *http://bilten.osns.rs/presuda/sentenca?url=sticanje-prava-svojine-1*, last visited July 30, 2025.

[64] See Court of Appeal in Belgrade, Gž. 8196/2013(3), 22 January 2014, *ParagrafLex.*

[65] See VSS, Rev. 2786/2005, 8 November 2006, *ParagrafLex*: "If the plaintiffs' legal predecessor had acquired ownership of the land prior to its transition into social ownership, then, at the moment of the establishment of the legal social, i.e., state ownership, that right was transitioned into a right of use of the same land" (translated by author).

[66] VSS, Prev. 26/07, 12 July 2007, *IngPro*.

[67] Court of Appeal in Belgrade, Gž.. 3604/22, 2 September 2022, *IngPro*; Court of Appeal in Belgrade, Gž. 8196/2013(3), 22 January 2014, *IngPro*.

[68] Court of Appeal in Novi Sad, Gž. 4005/2013, 6 February 2014, *IngPro*; Court of Appeal in Novi Sad, Gž. 427/14, 2 April 2014, *http://bilten.osns.rs/presuda/sentenca?url=sticanje-prava-svojine-1*, last visited July 30, 2025.

It seems that the aforementioned reasoning cannot fully withstand criticism. Namely, we agree that the period during which the land was socially owned property should not be counted in the time required for usucapio, but that is not the case here. The question is whether the period during which the land was in private ownership should be counted. With respect to that period, there is no need to retroactively apply any law, but rather the statutory rules that were in force during that time should apply. Thus, if the land was in the private ownership at the moment of acquiring possession of the land (or during the possession), it seems entirely logical that the general rules governing acquisition of ownership through usucapio should be applied; prior to 1 September 1980, this means the application of prewar legal rules, and thereafter the application of the rules provided by the ZOSPO.

Thus, the strongest argument in favor of including the time that elapsed before the immovable property transitioned into social ownership is the following: the application of the rules that were in force at that moment with respect to privately owned land. If such time were not to be included, this would completely disregard the rules that should to be applied to the given legal situation.

Consequently, the reasoning set forth in the aforementioned decisions is insufficiently convincing to support the view that the period prior to the land's transition to social ownership should not be counted. Moreover, the analysis shows that only the period after the entry into force of the 1996 amendments to the ZOSPO is regarded as relevant for usucapio: as shown, in some decisions it was even established that ownership had been acquired through usucapio before the land transitioned into social ownership, but such ownership rights were then transitioned into the right of use. This practically means that the possessor must once again meet the conditions for acquiring ownership through usucapio, now counting only the time after the 1996 amendments to the ZOSPO. The purpose of determining whether the conditions for acquiring ownership through usucapio were met before the transition to social ownership remains unclear, if such a possessor is treated in the same way as other possessors in whose case those conditions were not met prior to 1996. More importantly, this approach seriously undermines the protection of acquired rights.

Therefore, it seems that the reasoning expressed in the second group of court decisions, which uphold the opposite view, should to be accepted; these are the decisions in which the court considered it crucial to determine whether the periods for acquiring ownership through usucapio had expired before the land transitioned into social ownership.

An important decision in this regard was rendered by the Supreme Court of Serbia as early as 2000. Namely, the Court stressed as crucial that "it is necessary to determine, depending on when the disputed parcel became socially owned property, whether the plaintiffs could have acquired ownership rights if, by the time of the entry into force of the Law on Amendments to the Law on Basic Property Relations, the statutory period for usucapio had elapsed," as well as "when and on what basis the disputed parcel became socially owned property".[69] The similar opinion can also be seen in other court decisions.[70] Namely, the courts correctly stated that "the period for usucapio is a permanent legal fact, and when it exists both under the earlier and the new legal regime, then the rules of both legal regimes must be applied in combination for its calculation."[71] Recognition of the earlier legal regime is, as emphasized, in accordance with the principle of legal certainty.[72] Finally, a particularly significant decision in this respect was rendered by the Constitutional Court in 2014. The case concerned usucapio of land that had begun as early as 1958, while the regime of social ownership of land was established only in 1988. In such circumstances, the Constitutional Court stated that "the Court of Appeal failed to establish that the 20-year period required for usucapio had expired on 17 February 1978, and even if the rules of private law were to be applied, that period expired 4 years later – on 17 February 1982." According to the Constitutional Court, "such an omission by the Court of Appeal is of crucial importance for the decision."[73]

Such reasoning is therefore based on the premise that the rules governing the acquisition of ownership through usucapio of immovable property in private ownership must be applied up until the moment when the property transitioned into socially owned property. If sufficient time had elapsed, then it should be considered that the possessor acquired ownership at that moment. If not, that time must be added to the period after the removal of Article 29 ZOSPO.

Yet, it remains unclear: what significance does the transition of the land regime have?

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[69] VSS, Rev. 6725/99, 6 December 2000, *Intermex*, translated by author.

[70] Court of Appeal in Belgrade, Gž. 792/20, 5 February 2020, *IngPro*.

[71] Court of Appeal in Novi Sad, Gž. 5137/2013, 25 September 2014, *ParagrafLex*, translated by author.

[72] Court of Appeal in Novi Sad, Gž. 5137/2013, 25 September 2014, *ParagrafLex*.

[73] Constitutional Court, Už. 393/2011, 5 June 2014, *https://sirius.rs/cyr/praksa/nuLKIQ*, last visited July 30, 2025. Translated by author.

It seems particularly important to ask whether this created unequal opportunities for, on one hand, persons who claim acquisition of ownership through usucapio, and on the other hand, persons who acquired ownership in some other way but were deprived of it through the nationalization of land. Especially if such nationalization would have occurred anyway, regardless of who was the owner.[74]

We have seen that the Supreme Court of Serbia considered, in a decision from 2006, that the ownership right transitioned into the right of use. On the other hand, it should be noted that in a decision from 2020 the Belgrade Court of Appeal considered irrelevant the fact that the transition to social ownership had occurred, reasoning that "this would have an effect only in a situation where, by that time, the statutory periods required for acquiring ownership through lawful or conscientious possession had not yet elapsed".[75]

We believe that the aforementioned inequality does not in fact exist. An owner whose land was nationalized certainly has at their disposal the possibility to invoke the rules on restitution[76] in order to regain ownership, if they do not have possession. On the other hand, from the perspective of the possessor, it should be noted that in most cases, at the time of submitting the request for determining ownership acquired through usucapio, they have been in possession considerably longer than required under the ZOSPO (in some cases even for several decades). It seems unreasonable to require that the possessor, who in fact was never dispossessed, to once again meet the time condition, counting only the time from the entry into force of the 1996 amendments. It is important to establish that the possessor had possession of certain qualities for the period prescribed by law (10 or 20 years), but it is irrelevant whether that period comprises the first or the last 10/20 years of their possession – if the statutory conditions are met, ownership must be deemed acquired. The only condition is that the rights of any third bona fide persons must not be infringed. Finally, the matter must also be viewed in light of the reasons for the transition of the land ownership.

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[74] If the transition would not have occurred due to the timely establishment of acquisition through usucapio (prior to the transition), it would have been reasonable to consider that ownership was acquired at the moment when the conditions for such acquisition were fulfilled. In other words, the fact that the land subsequently transitioned to social ownership should be disregarded. This, of course, is subject to the condition that continuous possession existed throughout the relevant period, and that the rights of third parties acting in good faith are not thereby infringed.

[75] Court of Appeal in Belgrade, Gž. 792/20, 5 February 2020, *IngPro*.

[76] The term *reprivatization* is regarded as more precise than *restitution*. See Hiber 1998, 88 fn. 254.

6.3.2. Calculation of Time and Temporal Application of Laws

If we accept the view that the period for usucapio must also include the time that elapsed while the land was in private ownership, it raises the issue of the applicable methods for such calculations of time.

When considering the fulfillment of the conditions for acquiring ownership through usucapio, it is necessary to take into account the entire period of possession of the possessor and their legal predecessors, and to establish how long the immovable property was in the private ownership, with respect to that period. The matter is simpler if entry into possession occurred after the ZOSPO entered into force: in that case, only the provisions of the ZOSPO apply. However, if the period of usucapio began to run before the ZOSPO entered into force, "for that period the legal rules of private law apply," as the Constitutional Court emphasized in its 2014 decision.[77]

Thus, situations in which both the rules of prewar law and the ZOSPO must be applied may be particularly problematic, since the prescribed periods differ.[78]

According to Article 28 paras. 2 and 4 ZOSPO, the prescribed periods amount to 10 or 20 years.

Regarding the rules of prewar law, the prescribed period required for acquiring property through usucapio in the SGZ was 24 years.[79]

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[77] Constitutional Court, Už. 393/2011, 5 June 2014, *https://sirius.rs/cyr/praksa/nuLKIQ*, last visited July 30, 2025. Translated by author.

[78] The Federal Supreme Court, at its extended general session on 4 April 1960, adopted a general opinion that for immovable property not registered in the land books, the period amounts to 20 years (Gams 1974, 263). Although we consider the position of the Federal Supreme Court to be justified, it is disputable whether a general opinion of the Court could in fact serve to alter a legal rule.

[79] According to Article 929 SGZ (translated by author), "for immovable property, such as lands, houses, fields, meadows, orchards, vineyards, or mills, a period of 24 years is required for acquisitive prescription," which applies in cases of possession without title. If possession is with title and the property has been entered into the land register, 10 years suffice. However, in the case of immovable property belonging to state authorities, churches, or municipalities, the required period is 12 years "if entered in the land register in the name of the possessor," or 36 years if it is not.

Due to the uncertainties caused by situations in which both the rules of prewar law and the ZOSPO rules applied, a general position was adopted at the Joint session of the Federal Court, the republican and provincial supreme courts, and the Supreme Military Court held on 14–15 December 1983:[80]

> "The Law on Basis of Ownership and Property Relations contains no appropriate transitional provision regarding the calculation of time for usucapio that began under the earlier legal regime and ended under the regime of the new law. Therefore, the rule on the temporal applicability of laws must be applied, according to which the law in force at the time when the legal relationship arose is to be applied. However, the period for usucapio is a permanent legal fact, and when it exists both under the earlier and the new legal regime, then the rules of both legal regimes must be applied in combination for its calculation. By recognizing the earlier legal regime, in accordance with the principle of legal certainty, the time that had already elapsed must be included in the period for usucapio. Under the regime of the Law on Basis of Ownership and Property Relations, a period that began earlier cannot be longer than the period prescribed by this law."

As an additional guideline, it is stated that "if the Law on Basis of Ownership and Property Relations prescribes a shorter period, and upon the entry into force of the Law the remaining time is shorter than that prescribed by the Law, the period expires upon the lapse of the time determined by the earlier law. If, however, the remaining time under the earlier law is longer than that provided in the new law, the period expires upon the lapse of the time prescribed by the new law."

To illustrate with an example, if possession was acquired when the rules of prewar law were applicable, then if upon the entry of the ZOSPO into force the remaining time is shorter than that prescribed by the ZOSPO (shorter than 10 years for ordinary usucapio, or shorter than 20 years for extraordinary usucapio), the period expires upon the lapse of the time provided under the rules of prewar law.[81] On the other hand, if the remaining time is longer than the period prescribed by the ZOSPO (longer than 10 or 20 years), then the period expires upon the lapse of the time prescribed by the ZOSPO.

[80] Quotes taken from the decision of the Constitutional Court, Už. 393/2011, 5 June 2014, *https://sirius.rs/cyr/praksa/nuLKIQ*, last visited July 30, 2025. Translated by author.

[81] Court of Appeal in Belgrade, Gž. No. 4623/12, 11 March 2013, *IngPro*.

6.3.3. The Transition to Social Ownership – Interruption or Suspension of the Period for Usucapio?

The idea that the period for usucapio should also include the time before social ownership was established – provided that the land was in uninterrupted possession of the possessor (and their legal predecessors) – raises yet another question. Namely, what significance does the transition to social ownership have with respect to the calculation of time for usucapio? Does it lead to an interruption or suspension of the period for usucapio?

According to Article 30 para. 3 ZOSPO, "the provisions on interruption and suspension of the statute of limitations for claims shall apply mutatis mutandis to the interruption and suspension of usucapio."[82]

The linking of these two institutions – usucapio and limitation of claims[83] – is also noticeable in the rules of prewar law in which they even terminologically coincide: instead of "usucapio" the term "limitation" was used.[84] Nevertheless, these legal institutes are, in essence, different: the rights that are acquired, lost, or weakened on the basis of these legal institutes differ from each other, and their effects are distinct. The problems of analogously applying the rules on interruption of the limitation period to the interruption of the period for acquiring ownership through usucapio have already been pointed out by legal scholars (Stanković, Orlić 1999, 95).

With regard to the reasons for the suspension of the limitation period, such analogous application is possible in principle (Stanković, Orlić 1999, 95–97). However, is it possible when it comes to the problem we analyze? In other words, can any of the reasons that lead to the suspension of the limitation period also lead to the suspension of the period for usucapio due to the fact that the land regime has changed?

Having in mind the provisions of the Law on Obligations (ZOO),[85] which regulates the institute of limitation, it makes sense to analyze Article 383 ZOO. According to that provision, limitation does not run for the entire period during which the creditor was unable to demand fulfillment of the

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[82] Translated by author.

[83] For more on the concept and effects of limitation (*zastarelost*) in more recent literature, see Živković 2024, 130–133.

[84] Article 929 SGZ.

[85] Law on Obligations – ZOO, *Official Gazette of the SFRY*, 29/78, last changes in 18/2020.

obligation via the courts, due to *insurmountable obstacles*. This provision was taken verbatim from Article 26 of the 1953 Law on the Limitation of Claims, which remained in force until the ZOO entered into force.

Could the transition to social ownership, due to which the possessor could not acquire ownership, be considered an insurmountable obstacle?

The commentaries on Article 383 ZOO explain that the limitation period cannot run against a person who is unable to conduct litigation (Studin 1980, 859). Therefore, this article primarily refers to situations in which the court had been prevented from operating, as a result of which the creditor was unable to protect their rights.[86] Nevertheless, as noted, Article 383 ZOO does not necessarily refer only to such situations; its formulation is broader so as to encompass all situations in which it was impossible for the creditor to protect their rights via the courts, due to insurmountable obstacles. As stated, "the rule contained in this article belongs to general clauses" (Studin 1980, 859, translated by author), and it may apply not only to situations in which the courts are prevented from operating but also in which the creditor was objectively prevented from protecting their rights.[87] Yet, perhaps most significantly for our analysis, an insurmountable obstacle may also consist in the enactment of statutory provisions that prevent the creditor from protecting their rights: an example may be the introduction of a moratorium, i.e., the compulsory postponement of debt payments imposed by law (Stojanović 1980, 932).

Can we then say that the (involuntary) transition to social ownership, at the time when it was not possible to acquire ownership through usucapio of socially owned property, constitutes an insurmountable obstacle that leads to the suspension of the period for usucapio?

We believe that the answer should be affirmative. The same ideas already exist in legal theory. Simonetti points out that the prohibition of usucapio of immovable property in social ownership, from 6 April 1941 until the abolition of such prohibition, is comparable to the rules on suspension of limitation periods due to insurmountable obstacles (Simonetti 2008, 44).

[86] See also Article 944 SGZ (translated by author): "when there are no courts in the country, as in times of war or plague, there is neither commencement nor continuation of limitation."

[87] The mentioned examples are: if the creditor, during the serving of a sentence, was in fact prevented from making the appropriate intervention before the court; or if, due to natural disasters, the imposition of quarantine, due to an epidemic or similar circumstances, the creditor was prevented from protecting their right for a certain period of time; etc. (Studin 1980, 859; Stojanović 1980, 932).

The legal situation created by a moratorium is comparable to the legal situation created by this prohibition (express or implied) (Simonetti 2008, 44).[88]

What would this mean practically? If, for example, the period for usucapio began to run while the land was in private ownership, the suspension happens at the moment of the transition to social ownership, but the time continues to run no later than 4 July 1996,[89] provided that the immovable property had been in uninterrupted possession of the same possessor, or their legal predecessors, until that date (Simonetti 2008, 45). It is also important to emphasize that the transition must have occurred against their will. The same applies to land in state ownership before 6 April 1941, and which later transitioned to social ownership.[90]

7. ACQUISITION OF RIGHT OF USE THROUGH USUCAPIO

An affirmative position has been taken in more recent case law, that the right of use may also be acquired through usucapio, under the same conditions.[91] Such a position is nevertheless not uniformly applied in Serbian case law.[92] Interestingly, the decisions permitting the acquisition of the right of use of socially owned property were rendered almost at the same time when the completely opposite position was taken in sessions of the Commercial Appellate Court Department for Commercial Disputes and

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88 Brežanski, however, notes that the position of the Supreme Court of the Republic of Croatia (Rev. 114/2008, 28 October 2008) is different, namely that the provisions on suspension of the limitation period apply only to causes prescribed by law, i.e., insurmountable obstacles of an objective nature, such as war and similar circumstances, and not to situations where the acquisition of certain rights is not permitted by law (Brežanski 2009, 619).

89 Exceptionally, this may occur even before this date if private ownership of the land was reestablished prior to 4 July 1996 (Simonetti 2008, 45).

90 Article 931 SGZ.

91 See, e.g., VKS, Rev. 2036/2015, 16 June 2016, *ParagrafLex*; Court of Appeal in Niš, Gž. 1375/2017, 23 February 2017, *ParagrafLex*; Commercial Appellate Court, Pž. 557/17, 23 August 2018, *ParagrafLex*; VKS, Rev. 3464/21, 20 January 2022, *ParagrafLex*.

For Croatian law, see Brežanski 2009, 622; Kontrec 2017, 577ff.

92 See, for example, Court of Appeal in Belgrade, Gž. 6539/10, 4 November 2010, *ParagrafLex*; Commercial Appellate Court in Belgrade, Pž. 3485/18, 17 December 2020, *ParagrafLex*.

the Department for Commercial Offenses and Administrative-Accounting Disputes – that Article 28 the ZOSPO applies only to ownership rights, and not to rights of use.[93]

If the right of use can be acquired through usucapio, under the same conditions as ownership, the question arises why would anyone go for the acquisition of the right of use if it meets the conditions necessary for acquiring ownership. The only logical explanation would be that usucapio was employed to acquire the right of use of socially owned land at a time when it was not permitted to acquire ownership through usucapio.[94]

One of the reasons may lie in the arguments of the Supreme Court, according to which "after the adoption of the Law on Planning and Construction, which allows for the conversion of the right of use into the ownership of land [...] the usucapio (as an institute of private law) may by analogy also be applied to the right of use."[95]

The question arises as to the rationale underlying the adoption of such a position.

If it is indisputable that ownership can be acquired through usucapio, then a fortiori the right of use can also be acquired through usucapio, provided that the same conditions are met. Given also the right of conversion of the right of use into ownership, this is a logical extension of that position, explaining how the right of use itself may be acquired, and introducing the possibility that this may also be through usucapio. In most cases, this concerns situations in which, at the time of concluding the contract on transfer of rights, it was not permitted to acquire ownership through usucapio. On the other hand, such a request was sometimes a "safer" path for acquirers, bearing in mind that the courts were more inclined to establish the existence of a right of use than ownership, and subsequently the plaintiff's right of use led to the acquisition of ownership, through the application of the institute of conversion.

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[93] Answers to questions by commercial courts, adopted at the sessions of the Department for Commercial Disputes of the Commercial Appellate Court on 3 November 2015, 4 November 2015, and 26 November 2015, and at the session of the Department for Commercial Offences and Administrative-Accounting Disputes, on 30 November 2015, *IngPro*.

[94] "In the present case, the highest court considered that the defendant, together with their predecessors, had acquired the right of use on the basis of regular acquisitive prescription, for which a shorter period of possession (10 years) is prescribed. For this form of prescription, in addition to 10 years of possession, two further conditions must be met: the lawfulness and good faith of the possessor" VKS, Rev. 2036/15, 16 June 2016, *ParagrafLex*, translated by author.

[95] VKS, Rev. 2036/15, 16 June 2016, *ParagrafLex*; VKS, Rev. 3457/2019, 26 November 2020, *ParagrafLex*, translated by author.

Nevertheless, we believe that there is another reason why, in certain decisions, the courts favored the acquisition of the right of use. Namely, as discussed, part of the case law holds that a possessor cannot be in good faith if they know that the property is socially owned – and therefore they cannot become the owner. In such cases, the court starts from the assumption that the condition of good faith is indisputably met when the possessor believes that they have the right of use; in that specific case the right of use (not ownership) may be acquired through usucapio, since good faith – in the sense of the possessor's belief that they are the owner – cannot exist.

It appears that by applying the institute of usucapio to the acquisition of the right of use of socially owned land, the courts pursue at least three objectives: first, they seek to increase the number of situations in which the institute of conversion can be applied; second, they give legal effect to factual situations in which the conditions for the application of usucapio were met, but during a period when it was not permitted to acquire ownership through usucapio of socially owned land; third, by establishing the right of use they avoid the criticism that the condition of good faith cannot be fulfilled.

It is nevertheless interesting that the view allowing the acquisition of the right of use through usucapio is presented as "new", even though it was also applied to situations dating to before 1996, when it was not permitted to acquire ownership of socially owned land through usucapio. Yet such a position is not new, as evidenced by literature from the 1970s, which notes that case law undoubtedly recognized the possibility of acquiring the right of use through usucapio (Gams 1974, 266–267).

8. CONCLUSION

The possibility of acquiring ownership of socially owned land through usucapio has traversed a path from impossibility of application, beginning on 6 April 1941, to possibility by the removal of Article 29 by the 1996 amendments to the ZOSPO. As the concept of monopoly of social ownership gradually weakened, the acquisition of private ownership of socially owned land became permitted, but the case law seems to have gone even further in relaxing the rules. There are at least two reasons for this: first, there was no longer a need to favor social ownership; second, strict application of the rules on lawfulness and bona fide possession would have significantly reduced the scope of application of usucapio. This would lead to an absurd situation – attempting to strictly apply the rules on the qualities of possession would be unlawful, since the rules on usucapio would almost never be applied to land in social ownership, despite the legislator indisputably permitting it.

An analysis of the case law related to the institute of usucapio in general indicates tendencies to "use" it for resolving so-called old cases, and thereby indirectly for regularizing the land cadaster. This would result in the reduction of the number of unregistered immovables for which there is some documentation, and to which the statutory rules on usucapio could be applied, albeit sometimes more flexibly understood.

The position of the courts in disputes regarding socially owned land would perhaps have been easier had the legislator devoted special regulation to this institute, instead of providing for the application of the same rules of usucapio regardless of the type of ownership of the land. Bearing this in mind, the case law has justifiably taken the liberty not so much to create new rules, as at least to interpret and apply the existing ones more flexibly.

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