

Winning Prescription Without Title of State Property

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Abstract

This paper is a study on the winning prescription without the title of state property, which is in itself one of the first ways of acquisition of property according to Albanian legislation. The project of this topic is the analysis of the practical implementation of the institute of winning prescription without the title of state property. From the comprehensive treatment made in practice regarding the procedural and material aspects of this institute, the issues raised for analysis are related to resolving the issue of whether state property is an item capable of being acquired by winning prescription and whether the issuance of laws and bylaws will be considered cause for termination of the statute of limitations. Seeing in full the legislation in force in the Republic of Albania, as well as the spirit of this special legislation in the field of property and wealth real estate. State property is considered an impossible object to be acquired by winning prescription, as long as they do not meet the legal criteria for their transfer to private ownership entities. The plaintiff must prove that the lawsuit is directed against the person who was the owner until the conditions of the winning prescription are met.

Keywords: winning, prescription, state, property

Methodology Used

For the scope of the study itself, not only in time, but also in matters, that will handle is deemed reasonable to use a combination of methodologies, to achieve fulfillment of its final purpose. Literature search and selection as a first and important step in collecting of the main literature and ancillary, appropriate and in accordance with the study object.

Methodology used in the realization of the topic "Winning prescription without title of state property" begins with the use of the analytical method, which in the first part of the study was used to analyze practical application of the winning prescription institute without state title. Concretely this method has been used in practice analysis regarding procedural aspects and materials of this institute, issues raised for analysis have to do with resolving the issue if state property is a capable item to be won by winning prescription and whether the issuance of laws and bylaws will be considered the cause for the completion of the limitation period.

In this paper it is used and the case study method, which has helped me in analyzing the issues where I studied 3 (three) civil cases, I attended the relevant sessions by consulting the acts that occurred in the file litigation up to that stage of the process.

I considered it inevitable using the comparative method. The comparative method was used to make a comparison of cases in practice. I studied 10 (ten) decisions of the period 2017-2021 in order to identify the practical attitude. Due to different practical attitudes regarding the procedural and material aspects of the institute, issues raised for analysis have to do with the context formed, the question of whether the property is state-owned is item capable of being won by winning prescription and whether the issuance of legal acts and the law will be considered as a reason for termination of the statute of limitations.

Also in the literature formal and material resources have been used taken from the Albanian legislation as well as judicial jurisprudence over the years.

Keywords: *prescription without the title of state property, first ways of gaining ownership, litigation, object, legal acts.*

Introduction

In focus of the report is the analysis of the practical implementation of the institute of winning prescription without the title of state property. The reason for selecting this institute is that in cases with winning prescription without title, state property has displayed more practical problems.

From the case law research, I have studied 3 (three) civil cases where I have attended the relevant sessions by consulting the acts that occurred in the court file up to that stage of the process. I have studied 10 (ten) decisions of the period 2017-2021 on purpose to identify the practical attitude. Due to different practical positions regarding the procedural and material aspects of the institute, the issues raised for analysis are related to the litigation formed, the question of whether state property is an item capable of being acquired by winning prescription and whether the issuance

of legal acts and in law will be considered as a reason for termination of prescription. The treatment of the institute will be done in the following sections of this paper, the structure and content of which has been drafted in accordance with the Teaching Guide of the analysis report.

Issues actions and sessions attended

List of issues and acts under consideration.

Civil case with reg. No 2161, register date 9.09.2019;¹

Civil case with reg. No 911, register date 30.11.2018;²

Civil case with reg. No 4842, register date 16.06.2020;³

The acts taken into consideration that occurred in the court file in the cases listed are, the lawsuit request, the defense statement, the relevant evidence, acts of expertise, verbal process of the sessions. In the first case due to the procedural stage in which the file was at the beginning of the practice, I also reviewed the final conclusions of the parties.

B- Summary description of the facts, circumstances and condition of the acts taken in the analysis.

From the summary comparative analysis on the object and the relevant facts it results that the typology of facts is the same for all three cases⁴, the plaintiff claims that he has quietly possessed, for more than 20 years, behaving as owners, the property object of judicial conflict which appears registered in state ownership. In the comparative analysis differ from each other referring to the required material object (agricultural land, arable land, land), objects which are regulated in special legal provisions, part of the treatment of this analysis report.

C- Determining the material / procedural moment where the selected institute is located.

¹ Pre-professional practice at the Tirana Judicial District Court

² For the purpose of practice study in relation to the selected institute I have consulted the official website of the judicial district of Tirana, other judicial districts and the official website of the High Court

³ **Plaintiff** M.D; A.D; F.D; R.K; O.D; R.D; XH.D; **Defendants** Council of Ministers, Ministry of Finance ect, with cadastral item "Field"

⁴ In the case with number 2161 basic register. The plaintiffs claim the obligation of the respondent party to recognize them as co-owners with a winning prescription without title on the property with an area of 1462m2 with the **cadastral item "Filed" ect.**

In the case with no. 2161, I say that the procedural phase in which I participated was after the closing of the judicial investigation, in the submission of the final talks dated 14.10.2021. In the other two cases the hearings were preparatory and judicial, respectively¹.

Analysis of the institute of winning prescription without title of state property.

Legal questions raised.

Firstly, who are the passively legitimized subjects when the immovable property over which the acquisition of ownership by winning prescription is claimed is owned by the "state" in general?

Secondly, According to the legal and sub-legal framework, is state property considered an item capable of being acquired with a winning prescription without a title, as long as its legal criteria set out in special laws are not met, its transfer to the ownership of private entities?

Thirdly, the approval of acts legal and sub-legal regarding the right of ownership , does it mean the exercise of his property and consequently can it be considered as a reason for termination of the statute of limitations, issuance of legal acts and and sub-legal by the bodies state for the acquisition of ownership over an immovable property under a certain regulation?

Theory-practice report

With regard to the first issue to be grounded lawsuit statute of limitations winning the title, the plaintiff in addition to proving the existence of conditions required in Article 169 of the Civil Code, based on Article 170 must prove that the lawsuit against directs the person who *has been the owner* until these conditions are met. Ownership substantially belongs to the state, but "state" is an abstract notion in the sense that any property that is not verified to be owned by a private entity is presumed to belong to the state. Referring to the decision of the Civil College of the High Court² refers to

¹ In the case with no. 911The procedural stage in which I participated was the court session held on 22.10.2021. In this session was presented the expert for the reporting of the act of expertise ect.

In the case with no. 18051 basic register, the procedural phase in which I participated on 12.11.2021 is a preparatory session, where after the presentation of the parties and the appointed expert, the plaintiff requested the procedural transition due to the change of life plaintiffs.

² Decision of the civil panel of the high court no. 367 dated 16.09.2015, case R.S against the Council of the Municipality of Vlora.

the obligation of the courts to investigate if the property, object of the winning prescription is owned or administered by the Municipality or is owned by the central government.

Passive legitimacy, referred to theoretical treatment, is the real legitimacy of the parties in the process by which the identical being of the person will be understood that the respondent is identical with the person against which material law allows it to be raised a lawsuit. ¹When the immovable property is owned by the state, the law and bylaws come to the rescue.² This law classifies them as inalienable³ public property and alienable public property.

Referring to different positions in practice, results that the respondent has legitimized the Ministry responsible for the administration of state property. In some other decisions the Ministry is not legitimized, but only the Council of Ministers,⁴ with the legal argument that the ministry in according to the law, it has only the right to administer state property and not to alienate it. In another position of practice, only the State Advocacy is passively legitimized.

I consider that the right attitude is that the Council of Ministers is passively legitimized as a representative of the state owner or the respective local unit, depending on whether the property is owned by the central or local government. Other attitudes are not right, the Ministry of Finance and Economy, has no right to recognize owners, citizens who claim to benefit from the institute of winning prescription, right of ownership, for properties for which the relevant law does not recognize the right of disposal, consequently it cannot be passively legitimized. On the other hand, the State Advocacy can not be passively legitimized, referring to the law which defines its functions, it has the role of providing legal assistance and protects the property interests of the Albanian state but has no right to recognize owners citizens who claim profit through this way original ownership gain.

¹ Flutra Tafaj Kola, Asim Vokshi, "Civil Procedure-Part One, edition II, Albas, Tirana, 2018, page.128

² Law no.8743, For state immovable properties dated 22.02.2001 amended by law number 9558, dated 08.06.2006.

³ For inalienable public immovable properties are defined in article 3 point 1 of law 8743, dated 22.02.2001 "On state immovable properties" amended by law number 9558 dated 08.06.2006

⁴ Referring to the practice followed, from the acts that occurred in the court file in the case with basic registration number 2161, the plaintiff with a request for judicial settlement has requested to withdraw from the summons as a defendant in this process for the Ministry of Finance and Economy

In relation to the second issue;

From the point of view of substantive civil law, I consider it necessary to consider the elements of winning prescription as the original way of gaining ownership.

Uzucapio¹ means profit by use-possession.² The Civil Code in force provides for two types of statute of limitations, ordinary and extraordinary winning statute of limitations.³ Regarding the winning prescription without title, newly determined in the Civil Code⁴, when the immovable property is state owned, the same cumulative conditions are required to be met, this also refers to the position of the High Court⁵, conditions which are:

a) Possession of the item;

b) Possession for a certain time;

c) The item must be capable of being won with a winning prescription;

Contemporary doctrine, determines that to gain ownership of the thing through the winning prescription *the item must have been possessed* by the possessor uninterrupted, quiet (*nec vi*), public (*nec clam*) manner, and must have the will to

¹ The word 'Uzucapio' lat. Is formed by combining the words 'usus' (use) and 'capio-ere' (to take).

² Prof. Nathanaili A., 'Acquisition of Property through Possession', People's Justice Nr. 4/1956, p. 23. Acquisition of ownership by winning prescription relies on two main elements which are the possession of the thing and time making it possible through the action of the institute of winning prescription a state of fact, such as possession of the thing to be transformed into a just state, gaining ownership of the item.

³ Dissertation for the protection of the scientific degree of doctor, Altin Shkurti on the topic 'Possession and its protection' p. 77

⁴ In the case of the winning prescription without title as a way of gaining ownership, a new term will start from 01.11.1994, the date on which the new Civil Code entered into force. This position was also held by the Supreme Court in the cases it reviewed. Thus, the Civil College of the High Court, with decision no. 303, dated 06.10.2009, has decided to annul the decision No. 1097, dated 12.10.2006 of the Court of Appeals of Tirana and the decision no. 4717, dated 15.07.2005 of the Court of First Instance of Tirana and the termination of the trial of the case, reasoning that among other things that: '... since in this case we are in the conditions provided by Article 169 of the Civil Code, deadline I prescription is 20 years old.

⁵ Decision of the Civil College of the High Court no. (100) dated 23.03.2016, S. Panoti case against the Ministry of Agriculture, Food and Consumer Protection, Regional Directorate of Agriculture, Food and Consumer Protection, Local Immovable Property Registration Office Tirana. It is said that after 1991, ownership of the land was allowed, and they were already able to acquire the non-public immovable

keep the item as its own (nec precario) .The attitude also stems from the jurisprudence of the European Court of Human Rights.¹ For an item to be able to be won with a winning prescription it must be possessed by its winner. As a rule, they are capable of acquiring both movable and immovable property which are in civil circulation. The rule which has its exception. Thus, items that are out of civil circulation cannot be acquired by winning prescription. After the theoretical approach, as above evaluated that we must determine some moments as a function of the second question raised for analysis.

First, what is the real estate on which the acquisition of ownership with a winning prescription without title is claimed?

Referring to the same typology of facts and object, the property subject to trial is owned by the state. The legal and sub-legal framework that is implemented are the laws and bylaws referred to in the first question raised.

Second, are real estate subject to litigation, inalienable public property?

Article 4 of Law 8743/2001 provides that state immovable property, which is not public property, such as agricultural land, land, buildings, hardened assets of the enterprise are placed under state administration, as well as other properties of this type, ***if are not subject to special legal provisions***, have a legal regime equal to private property and are subject to the rules provided in the Civil Code. The position of the practice in 7 out of 10 cases analyzed is that the property subject to trial is not inalienable public property, consequently Article 4 of the law applies, which in an *ad contrario* interpretation in case the state property has a legal regime regulated by a special law, the acquisition of ownership will be carried out taking into account the application of , relevant legislation, excluding the general rules of the Civil Code. So in the civil case in the reasoning part it is determined that:

'Special laws have given the right to private entities to buy state-owned land, addressing the competent bodies, depending on the manner and time in which they have used this land. In these conditions, the right to acquire the ownership of state property by private

¹ A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. United Kingdom no. 44302/02 ECHR 2002 according to which "konk the concrete issue was not related to the restriction of property in order to deprive the owners who are with regular papers. The goal was to fix the factual relationship. Historically, 12 years of possession by the respondent party was sufficient to extinguish the previous owner's right to reclaim his right or regain possession, and the new title depended on the principle that long, uninterrupted possession, so calm, it gives you a title".

entities is part of the search of the latter and the fulfillment of certain criteria for the nature of the land and its use ¹.

In the case of transferable state property, for which the state may carry out actions as private entities, the alienation to third parties is carried out taking into account the criteria of special laws. ²

The court in one of the cases maintains that the principle "lex specialis derogat lex generalis", gives priority to the application of the special law for the acquisition of ownership over a state-owned immovable property.

As above based on the theoretical and practical analysis, I evaluated that the position referred to is correct and should be followed in the case of the three issues referred to in the introductory part of the report. As long as special laws define the following of certain administrative procedures, the transfer of state property in favor of private entities, if these procedures are not applied, state properties are consequently not able to be acquired by winning prescription, thus leading to non-compliance of one of the cumulative condition.

Regarding the third issue,

Acquisition of ownership by beneficiary prescription is based on the possession of the thing, the definition of which is found in Article 304 of the Civil Code. From the content of the article and the subsequent provisions that regulate the possession, it is not determined what are the legally required conditions for the possession of the thing for the effect of its profit with a winning prescription. Possession of the object is considered to be when it is acquired peacefully, ie without physical or psychic violence, and is held by the possessor "without being disturbed" by persons claiming the existence of their right to possess the property.

In decision no.6296 date 15.01.2020 the court reasoned that the actions or decisions of the state administration bodies, show the interest of the state for the state properties, regardless of whether they are submitted directly or indirectly, spoil the peaceful possession of the possessor over the respective property. The state

¹ The opposite position is evidenced in the decision no. 9937 and number 2915 act, the court of the Tirana judicial district, where the court has decided to accept a lawsuit

² V.K.M. no.200 dated 19.02.2009 and DCM no.578 dated 29.08.2012 On determining the procedure of transfer of ownership of yards in use, where the subject must address the competent body that is the PRCA in an administrative way to gain the right of ownership over yard in use ect.

expresses its will through legal and sub-legal acts from time to time, depending on the issues and problems that are presented for solution, thus bringing about the interruption of the further progress of the winning prescription deadlines. This position was also maintained in the decision of the Constitutional Court No. 4/2016. Regarding the above theoretical and practical treatment, I consider that the position of the court that accepts the semi-legal or legal summary is the way it expresses its will in exercising the property rights of the state, by 'directly' concerning the possessor and the and consequently interruption of further walking of term winning prescription, is right.

Comparative analysis between practical cases.

From the study of practice, specifically 10 (ten) issues of the period 2017-2021 Regarding the first legal question, practical positions can be grouped:

1. The Council of Ministers is passively legitimized in most of the analyzed decisions.
2. In the rest of the cases, the Ministry responsible for the Economy and the State Advocacy is passively legitimized.

With regard to the second and third question⁶ of 8, the trial court decided to dismiss the lawsuit referring to the 2 main reasons.¹

Firstly, state property which is regulated by a special law can not be equated or have the same legal regime as private property, which excludes them from the scope of the material civil institute as a way of gaining ownership, being out of civil circulation.

Secondly, the non-possessive owner, the state has not remained passive. The legislator in the legal sense has not left the plaintiff in possession, issuing a series of laws and bylaws, regarding the resolution of the situation in question by interrupting the passage of time.

In the other two cases, the reasoning for dismissal of the lawsuit is related to the characteristics of the state entity which expresses the will through legal and sub-legal acts² and the reasoning for the existence of a special law. In two court cases analyzed, the court decided to accept the lawsuit.³

¹ Decision No.9100, No.Acti 1587, dated 06.11.2018 with litigant Plaintiff M.SH. and the respondent Municipality of Tirana, Council of Ministers

² Decision No. 10095 dated 21.03.2018 of the Court of the Tirana Judicial District.

³ Decision no. 448 dated 17.06.2016, of the Lushnje Judicial District Court Plaintiff F.B. with the respondent Ministry of Economic Development, Trade and Entrepreneurship Tirana and

In the case with No. 9937 Decision¹, the court refers to the special law 8743/2001 article 4 without stopping in its analysis with the argument that the property under trial is state property, free in civil circulation, individualized and capable of being acquired with winning prescription.

In the case² with plaintiff V.I. defendant Municipality of Tirana, the court has reasoned that there are all the conditions and elements required by the winning prescription institute. With regard to possession, it is considered terminated only when it is proven that against one of the possessors over the years a claim has been filed in relation to the thing by the owner through a regular lawsuit before the court.

3. Conclusions and recommendations

Firstly, The plaintiff must prove that the lawsuit is directed against the person who was the owner until the conditions of the winning prescription are met. The Council of Ministers or the relevant local unit is passively legitimized when the property under trial is respectively owned by the central or local government. The Ministry of Finance and Economy is not passively legitimized as it has the administration and not the alienation of state property. The State Advocacy is not legitimized because in the sense of the law "On Advocacy" it provides representation and legal aid to state bodies.

Secondly, State properties which are regulated by a special law in the sense of Article 4 of Law 8743/2001 can not be equated or have the same legal regime as private property. Looking at the entire legislation in force in the Republic of Albania, as well as the spirit of this special legislation in the field of property and immovable property, state property is considered as items incapable of winning with a winning

third person Municipality of Lushnja, Municipal Council of the Municipality of Lushnja, IPRO Lushnja, the court rejected the lawsuit on the grounds of the existence of a special law. In the conditions when the specific law no. 171/2014, determines the rules for the transfer of ownership of agricultural land, as well as law no. 8337, dated 30.04.1998 "On the transfer of ownership of agricultural land, forests, meadows and pastures", prohibit the alienation of this property, the court considers that the land subject to conflict claimed by the plaintiff is inalienable and can not be subject to prescription winner without title.

¹ Decision No. 9937 and No. 2915 Act, Tirana Judicial District Court with plaintiff Q.R and defendant Municipality of Tirana with the object of winning with winning prescription of 249.9 m2. the item is individualized real estate, in the inventory of properties of the Municipality of Tirana and is an Illyrian item in civil circulation

² Decision No.10406 and No.1475 Act, Tirana Judicial District Court

prescription, as long as the criteria are not met. legal for their transfer of ownership to private entities.

Thirdly, the State is an abstract notion and unlike private subjects of law, it lays subjective rights deriving from the relationship of ownership through its bodies. The adoption of laws and bylaws is the way it expresses the will to exercise the rights of state ownership, 'disturbing' the possessor and consequently interrupting the further running of the winning statute of limitations.¹

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- Law 171/2014 "On the completion of legal procedures for the transfer of agricultural land of former agricultural enterprises owned by beneficiaries";
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¹ This report contains 2510 words, which do not include foo notes and bibliography

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Jurisprudence

- [1] No 2161Reg. Founder, registration date 19.09.2019;
- [2] No.911 Reg. Founder, registration date 30.11.2018;
- [3] Nr. 4842Regj. Founder, registration date 16.06.2020;
- [4] Decision of the Civil College of the High Court no. 367 dated 16.09.2015;
- [5] Decision of the Civil College of the High Court, No. 463 dated 2014;
- [6] Decision of the Civil College of the High Court, no. 303 dated 06.10.2009;
- [7] Decision of the Civil College of the High Court no. 100 dated 23.03.2016;
- [8] Decision of the Court of the Judicial District of Tirana No. 6296, No. Act 3227, registration date 15.01.2020;
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