

Justification of Acquisitive Prescription in the Civil Law System. Why is It Not an “Uncompensated Deprivation?”

Silvana Dode, PhD Cand.

State University, Law Faculty, Tirana

Lecturer at “Aleksander Xhuvani” University

silva.dode@yahoo.com

silvana.dode@uniel.edu.al

Abstract

Acquisitive prescription (a civil law institute) and Adverse Possession, its equivalent in the common law system is already a consolidated private law institute. It is recognised from the legal systems of almost each country in the world and is among the most important original ways of gaining ownership. Its constitutionality and the fact that should it be recognised from a legal system or not was brought in question in 2002, sparking a debate between lawyers in the world. The debate rose after the announcement of the decision of the ECHR (European Court of Human Rights) in the case *JA Pye (Oxford) Ltd vs Graham*. The Fourth Chamber of the ECHR held that acquisitive prescription is actually an ‘uncompensated deprivation’. First, we will analyze the main theories on the basis of which this institute is justified. The question to be raised for the review of the article is whether prescription is morally and legally justified, especially in the case of prescription in bad faith. In the end, it will be reached the conclusion that there are justified reasons for the prescription and it is a very useful institution in the civil circulation. But preliminary stricter legal criteria must be met for the recognition of the property right by prescription, especially in the case of bad faith prescription. The law should aim to provide a greater protection to the legitimate owner.

Keywords: property rights, ways of gaining ownership, acquisitive prescription, property deprivation, european court of human rights

I. Why the need for justification of adverse possession.¹

The strange and wonderful “doctrine of adverse possession.” (Stake, 2001) shows interest for study because it is one of the institutes of law, known as the common law and civil law, which contains many contradictions. Application of this institute always has faced strong debates and controversy, as in its implementation both in private law and in public law.²

Although this institute is found in both systems of law, mostly efforts to justify it are made by the researchers of common law. But it is difficult to find a single justification for the doctrine of adverse possession, as it can be applied in different cases and situations that may vary greatly from one another.

The debate on justification of adverse possession has centuries that goes on. Since the beginning of nineteenth century the famous American judge Holmes has described adverse possession “a pure evil” Some authors say that adverse

¹ Acquisitive prescription” is term used in civil law, and “adverse possession” in common law. After a possession that continues for a certain period of time explicitly in law, a holder may become the owner of movable or not movable property. For this he needs to establish the court, on the expiry of adverse period a lawsuit on “Knowing ownership through adverse possession”. If the user knows that is using someone else’s land, is called misfaith, if the user thinks that the land is his is called possession in good faith. Good faith is important only in civil law, not in common law.

² “Ever since the days of Grotius, there has been considerable discussion on the contents and function of...acquisitive prescription, while some of the leading international lawyers of the 19th century such as Fedor von Martens (1845-1909) and Alphonse Rivier (1835-1898) disputed their place in international Law.” (Lesaffer, 2005, page 47)

possession does not vary much from theft. "If the origin of property is "the agreement among men legalizing what each had already grabbed, without any right to do so, and granting, for the future, a formal right of ownership to the first grabber," how is property any different from theft?"¹ Another well-known author of private law, Ballantine, stated that the adverse possession is "an anomalous instance of maturing a wrong into a right contrary to one of the most fundamental axioms of the law."² While from other researchers is considered "an irregularity within our property regime" (Foncello, 2005) or "disproportionate punishment" (Williams, 2009)

Only in the twentieth century took a special importance study of the causes and justifications of various institutes of law. Unlike the theories of legal formalism, who saw the law as a whole legal norms, which are established once and for all, unchangeable, in the twentieth century was developed the theory of legal realism, which means that the law can take place only through doctrinal debate, justification of various institutes, debates that develop jurisprudence. Law is forged through policy arguments, moral justifications, and institutional considerations, not discovered through deduction from abstract principles.³

Can be justified an institute of depriving the owner of his right only because another person has owned it for a long time? Just because the property right has an important role in society (Aristotle defined it as one of the three basic human rights) its restriction and the specific cases when it can be limited should be expressly provided by law.

In our work, analyzing the reasons that justify the institution of adverse possession, we will argue that the institution of adverse possession does not disappear the essence and purpose of the right of ownership, although it represents a certain limitation on the exercise of this right.⁴

II. Authors for and against acquisitive prescription

Some researchers accept the duality of this institute which might be helpful but essentially contains a contradiction⁵

a In general, adverse possession has lots of researchers as its tougher opponents.

These authors have named the winners of the property by AP as a thief (Katz, 2010) Others have suggested canceling completely such doctrine (Burns, 2011)⁶ Burns claims that all the justifications that exist for AP are not enough to maintain this institute of law in feet. Cannot be supported the help provided to the most vulnerable people in society or increase the productivity of land by this institute already outdated, he suggests.

There are other authors who think that despite the cancellation is the right way, in order to achieve the cancellation of this institute will pass plenty of time, so their suggestion is to fine the owner who in spite of having a registered title, has not paid dues as owner (did not pay property tax, or does not maintain it (Heap, 2010) It has also been suggested that to the society can be caused a serious damage especially in case when the state property is acquired by AP (which shows that negligence of government institutions to exercise its rights as owner undermines the whole society.) Some other authors even believe that AP promotes illegal possession of land (Yin Teo, 2008). This author even thinks that AP in bad faith should no longer be recognized by Australian legislation

¹ Clarke, 2005, page 570

² Ballantine, page 135

³ Clarke, 2005, page 602

⁴ Cerel, 2010, page 4 "it is essential that such restrictions should in no way effect the ground itself of this right, that the ownership right could never be completely annihilated."

⁵ "On voit donc qu'il s'agit d'une institution à la fois utile parce qu'elle consolide les droits des propriétaires légitimes et redoutable parce qu'elle permet à un simple possesseur d'être préféré au propriétaire en titre." (Buffet,

⁶ Burns even suggests canceling the application institute AP in Australia, considering duke e konsideruar: "rough-and-ready" doctrine, which has the potential to undermine the otherwise indefeasible interest of registered proprietors." (Burns, 2011, page 1)

Also a study conducted by the Hong Kong government in 2012 provides that AP can not have any moral justification. *"There is no justification for what is essentially a transfer of property without compensation from the deserving to the undeserving.."*¹ While some authors thought that the AP in bad faith, at first glance creates the idea that "undermines the security and exclusivity of ownership", therefore affect the essence of the property right. Exactly the criticism directed against this doctrine, promote the duty to justify it, as an institution that is supposed to be effective for many years to come.

b) Researchers in favor of AP

Despite the controversy, some researchers have noted that "If we had no doctrine of adverse possession, we should have to invent something very like it." (Stoebuck & Whitman) Many other scholars agree that AP is entirely justified. "The concept of adverse possession is called-for and economically justified within a property order."² Clarke suggests that AP should definitely continue to exist as the right of ownership is an interaction between power over the property of people at the same time. So, possession, as task of ownership, means to communicate to others constantly that you are the owner of the item. Through AP, communication must continue steadily, otherwise you can lose not only the task of possession, but entirely real subjective right of ownership.

Despite that AP somehow resembles with theft, as we will argue ongoing, benefits from this institute for society as a whole are much greater than its costs. "Regardless of the moral argument that adverse possession is wrong and tantamount to stealing, it can be demonstrated that the benefits outweigh the detriment."³

AP is considered an efficient institution, especially in the case of states that have passed conflicts, where land system has been very unsafe for a long period of time, like Timor-Leste (Williams, 2009) or Cambodia, also in developing countries like Brazil, Peru (Phalmy, 2007) This institute will enable to solve quickly ownership conflicts and consequently to develop more the economy of these countries. Some researchers, like Marais, has concluded that not only AP has a moral and economic justification, but it is in accordance with the constitution of South Africa.

There are opinions that the AP goes against to the constitutional provisions of a state and of the European Convention that recognize the right of property. But for some authors, AP can not be against the right of ownership, because otherwise possession as the institute would have no value. "If it is incompatible, the impact of possession as a means of extinguishing a former title in land and creating a new one as discussed in this article is reduced to a meaningless concept."⁴

Despite the debate that still continues in doctrine regarding AP and disagreement about this institute, the following excuses will again show us why this institute is still recognized by most of the countries in the world (excluding China).

III- Justifications

Among the main justifications that different authors have consistently cited in the literature for this institute, can be mentioned:

¹ Law reform Commission Hong Kong, 2012, page 2

² Bouckaert & Depoorter, 1999, page 5

³ Heap, 2010, page 26

⁴ Panesar & Wood, 2007, page 4

1. In silence, the owner allowed land use by someone else

Merril calls this "justification of sleeping owner" while Stake uses the famous phrase "you snooze, you lose". So, the owner of the land can do whatever he wants with his land, can even leave it without working. Leaving the land without working, is not an justification for AP. But the negligence of the owner and leaving the ownership in the hands of someone else is the main justification.¹ The owner may leave uncultivated the land, but should not allow someone else to work it. This is one of the most common justifications accepted by the various authors (Greenberg, 2010; Turley, 2013) Singer also is of the opinion that it is the silence of the owner that justifies this institute: "It is morally wrong for the true owner to allow a relationship of dependence to be established and then to cut off the dependent party."²

If AP would not be recognized as an institute, it would be morally unjust by the owner, to allow a quiet uninterrupted possession of the holder, and then to cut off the relationship created (This fact is even more evident in the case of prescription in good faith, where there is a connected transaction between the owner and the holder). Having a right means at the same time to do all lawful action to protect it. If the owner does not protect its right of ownership for a time so long, taking his property is fully justified. "Sometimes it is said that, if a man neglects to enforce his rights, he cannot complain if, after a while, the law follows his example."³

Even the Supreme Court of England has admitted that the main purpose of AP is to protect the holder who has used the land for a long time.⁴ So with this excuse, we see AP as punishment against the owner, who did not exercise his rights (Marais, 2011). So, the conduct of the owner himself by approving someone else to use his land is rated as the main reason, that would justify the use of AP institute in the field of intellectual property. (Bagley & Clarkson, 2003)

Therefore AP has retroactive effect and the holder shall be deemed the owner from the moment that has entered into possession of the item. Because just in that moment, the owner with his behavior has allowed the use of his property by third party. By encouraging owners to exercise their right of ownership, AP promotes and facilitates transition of ownership transactions. So with this excuse, we see AP as punishment against the owner, who did not exercise his rights (Marais, 2011).

That is why the conduct of the owner himself by approving someone else to use his land is rated as the main reason, that would justify the use of AP institute in the field of intellectual property. (Bagley & Clarkson, 2003) Therefore AP has retroactive effect and the holder shall be deemed the owner from the moment that has entered into possession of the item. Because just in that moment, the owner with his behavior has allowed the use of his property by third party. By encouraging owners to exercise their right of ownership, AP promotes and facilitates transition of ownership transactions.⁵ This excuse has been criticized by one of the judges of the case *Pye vs ...* Judge Neuberger says there is no reason to deprive an owner of his property (and especially in the case of land, where the consequences of deprivation are very high), just because he has allowed his property to be used by someone else. *This has also thought even Dockray* "Why should it protect a wrongdoer – a person whose conduct might be tantamount to theft – but whom the law may nevertheless aid even against an innocent owner, that is, a person who did not know and could not have discovered that time had begun to run?"⁶

Pavarsisht kritikave ky ende mbetet nje nga justifikimet me te vlefshme edhe sot per parashkrimin fitues, sidomos ne rastin e posedimit me mirebesim.

¹ AOL, 1977, page 10.

² Singer, 1988, page 611

³ Oliver Wendell Holmes, *The Path of Law*, 10 HARV. L. REV. 457, 476 (1897).

⁴ Martin, 2008, page 2

⁵ Interest in this respect represents a decision of the Court of South Africa, where the Court stated that "In a modern society, where unimproved property is frequently held for long periods by owners who live far away, and sometimes even abroad, the social desirability of [acquisitive prescription] may be questioned."⁶² (*Morkels Transport (Pty) Ltd v Melrose Foods (Pty) Ltd and Another.*) (Marais, 2011)

⁶ Marais, 2011, page 163

Despite the criticism this still remains one of the most valuable excuses today for AP, especially in the case of possession in good faith.

2. Legal security

First, Legal security is related to the evidences in a judicial process. Merrill calls this excuse "the problem of lost evidence" The more time passes the more increases the possibility of loss or destruction of evidence to prove the allegations in the judicial process. AP facilitates the process of proof of ownership in the trial. Being an original way of earning the ownership, is enough the proof that the one who hold the land has won it with AP, and there is no need to be done the so called "probaton diabolica".¹

Secondly, the buyer of a property, which bought the land from a person who has acquired it by AP, has the maximum security that after buying the item, no person will press charges, claiming he has won the item with AP. (Bouckaert & Depoorter, 1999). So the application of AP increases legal security to buyers during the sales transaction. But also the opposite interpretation is valid, and AP can be seen as an institution, the existence of which diminishes the legal security in signing a sale transaction.

The buyer is at risk after the purchase of the property, since a third person can pretend to have acquired ownership over the property with AP. In fact, the security of property rights is considered by some authors as "public good" (Rose, 1988; Clarke, 2005). AP can give security for several parties at the same time, first to protect the public interest². Secondly it gives assurance to third parties that have entered into legal relations with the recipient at the time of possession. So the AP allows a de facto situation becomes a situation, "de jure", creating in society "legal certainty by preventing parties from unnecessarily litigating about ownership"³ Facilitating the process of proof of ownership in a civil proceeding, AP directly affects the growth of legal security in society. The principle of legal certainty has been recognized as one of the main justifications of AP by one of the leading scholars in the beginning of the twentieth century, Ballantine stated that AP has no intention to penalize or punish.⁴

The principle of legal certainty brings positive effects for several different subjects, first in favor not only of holders (who after many years that owns the land actually create certainty that the property will not be deprived of possession), but also helps increase transactions transfer of ownership, where third parties have already assurances that the title of the owner is free from any claims of third parties. And in the end, the most important consequence is that AP is in favor of the whole society in general, as if there are security to property titles, not only the society will increase stability but also the foreign investment. (Investors have certainty in sustainability of titles (Williams, 2009).

Third, AP also creates legal certainty by resolving disputes about ownership of land." The purpose of constituting prescription is to put an end to litigation."⁵ But unlike what some authors believe that AP facilitates sales transactions, actually there are some thoughts that this institute can increase insecurity. Prospective buyers of a property cannot have assurances that there are no potential suitor who in the future could sue the owner with a lawsuit to gain ownership by AP. (Martin, 2008) Despite this disagreement, the creation of a state of legal security for the parties directly concerned but also for society as a whole is an undeniable consequence for this institute

¹ This evidence is required in case of a rivendikim lawsuit. The one who pretends to be as owner, must prove how he acquired the ownership from a third party. After this, the previous owner, must prove how he acquired the ownership, and so on.

² Rose, 988 : " if no one knows whether he can safely use the land, or from whom he should buy it if it is already claimed, the land may end up being used by too many people or by none at all."

³ Marais, 2011, page 154

⁴ Has not for its object to reward the diligent trespasser for his wrong nor yet to penalize the negligent and dormant owner for sleeping upon his rights; the great purpose is automatically to quiet all titles which are openly and consistently asserted, to provide proof of meritorious titles, and correct errors in conveyancing.

⁵ Charles, 1911, page 3

3. Connection created between property and possessors (reliance interest)

This justification is essentially a moral justification. As said from the famous judge Holmes "Man, like a tree in the cleft of a rock, gradually shapes his roots to the surroundings, and when the roots have grown to a certain size, can't be displaced without cutting at his life."

This is the justification that Merrill calls "quieting title" and that Posner calls "maintaining the status quo". By quieting titles, AP increases the number of transactions and creates more security for owners. By clarifying the ownership titles, the number of transactions will be increased in ownership transfer against a person who appreciates more the land. So the potential buyer of a property, the owner of which has acquired ownership by AP, is safer since the land is owned by the owner and will not have a subsequent lawsuit which will rise by possessors who would claim to own the land. By creating certainty in the exercise of property titles, is increased the potential for developing them, because now the owner has the certainty that he will not lose the property in the future.

For some authors this excuse with the excuse of silence of the owner, are the only ones who still have value in the XX1 century (Stake, 2001) That's why some authors call this excuse is the most important one for the institute of AP. "The basic premise must be that long, unchallenged possession of land should not be disturbed." (Panesar & Wood, 2007). If the property will then be taken to the possessors after a long possession, we will have as a consequence the creation of a situation of legal uncertainty. In most cases, possessors are poor people and squatters who have no means to live, and the apartment where they may have set is the only property they have.

For some authors, this is one of the main justifications for the use of the institute of prescription in the case of intellectual property (Bagley & Clarkson, 2003). Nay "reliance interest It is the main reason that in common law claim for restoration is prescribed (can not be established after the expiry of a given period). In civil law, mostly in France and in Albania the restoration lawsuit is not prescribed. So the main purpose of the AP is: "to grant legal certainty to the peaceful use of the asset that continues over time." (D'Isa, 2013)

Well AP aims to maintain a status quo condition, which is supported from "Theory of personhood", which justifies AP in the connection established between the possessors and property (Burns, 2011; Foncell, 2005; Rose, ...). So through the property, the possessors achieve to obtain his "self-development". To say it briefly, adverse possession is "a wonderful example of reward to useful labor, at the expense of the sluggard."¹

But why is created this link between the possessors and the owner Merrill has analyzed four reasons why there is this link. First, the theory of personhood, holder creates a connection with the land, and begins to identify with this wealth. Secondly, the aim to preserve peace in society, so the relationship between the possessors and the land is so big, if deprived from the property after so many years of possession severe conflicts will begin. Third, Merrill gives the case when the possessor has made investment in this land. If there would not be adverse theory, the possessor would have interest to buy the land (to become owner also of the investment that he has done). But his interest to buy the land is large, which would encourage the owner to increase the price of land. This shows that the possessors, in the absence of AP institute, will be in a discriminating position towards the owner. Fourth, AP protects third parties, who throughout the time of possession have entered into legal relations with the possessor, believing that he is the true owner of the property. So the human instinct and the connection created between the possessor and the owner (allowed by the silence of the owner) is the greatest justification for AP "The law can ask no better justification than the deepest instincts of man"²

This excuse is supported too by the theory of "Radins' personality theory". If for a long time there is not an accordance between the entity that exercises the right of ownership and the holder of the real property (ie if the owner has essentially an empty ownership) then this property can not be part of the market. This condition may occur in two situations, which are very widespread in Albania. Firstly, if the registered owner has vanished and for many years a third person has taken

¹ Carol, 1988, page 79

² Turley, 2013, page 1032

care of the property. Secondly in the case when between the owner and the third person has been signed an agreement for the transfer of ownership which contains flaws that render it invalid (for example is designed verbally and is not registered in the records of the mortgage).

The first case justifies the acquisitive prescription without title. Such cases have been encountered in Albania after 1990, for some reasons. Firstly, when the wave of immigration led many landowners to emigrate abroad leaving their lands without being exploited for many years. Secondly, the prolongation of the process of restitution of property has left many lands without a legal owner registered in the Register of Immovable Properties. This fact has brought as a consequence the occupation of many lands and the inheritors of the properties confiscated before 1945, because there are not still recognised as the legal owners, are not able to sue for the recovery of properties in Court. Thirdly, in many areas of Albania there is not yet performed the update process of immovable properties.¹ This has meant that for over 20 years there have been signed verbal contracts for the transfer of land ownership, or contracts in the form of a simple letter, but not as a notarial act.² This means that the ownership of these lands is not legally deemed to have passed from the seller to the buyer. The buyers of these lands have owned them for years, but the increase in value of the land might pushed the property owners to seek cancellation of these contracts and to require from the holder the return and release of the property. Acquisitive prescription is an institute that in all the cases above protects the holder, who through not their fault put in a situation that gravely damages their interests.

Although there are criticisms about the fact that this excuse does not apply in the case when state bodies are those that have possessed the object, again this is one of the justifications which is more well-founded and is less contested in the literature. This is because it is connected with the core of the property right. The universal aim of the ownership right is that all valuable objects should be owned by someone (Gardiner ..) So leaving the property without being exploited is not the main reason that justifies acquisitive prescription. In fact the owner can leave the property unused, and he isn't deprived from the property in this case. But the fact that the property has been owned by someone else, has made that one of the most important powers of ownership, possession, passes to someone else. This fact, entails as a consequence that the state should legalize the transition of all the other powers of the ownership to the holder.

4. Economic Justification

The economic justification of acquisitive prescription can be connected with some economic consequences that come from the application of this institute.

a. Firstly the "marginal usefulness of revenues". This constitutes what is called "status effect theory (Stake, 2001). So it becomes very important the effect and the consequences on the parties. So how is prescription perceived by the owner or the occupier, the profit or loss of the property after the expiry of the limitation period.

The possessor perceives the acquisition of property as a natural consequence on the conclusion of the period of limitation (its loss would be conceived as a decrease in his income) Whereas for the owner, to retain ownership after the expiration of the limitation period is perceived as a benefit and an increase in his fortune. (Bagley & Clarkson, 2003; Holmes ...; Ellickson, 1989; Gardiner, ...) So through prescription property exceeds to that subject of law for which the property has greater significance but who can not gain property through a voluntary transaction with the owner because he does not intend to sell it.

b. The objects are not left without being exploited, but through the holder, they are used maximally during a period of time. This justification applies mainly if we are dealing with immovable objects. So the property is given to that user who is most productive and issues the maximum benefit from the items. (Bagley & Clarkson, 2003) This refers to Locke's theory

¹ The process of carrying out the registration in the Register of the Office of Immovable Property Registration of all exact borders of immovable properties

² Article 83 of the Albanian Civil Code: "Any legal action for transfer of ownership of real assets and real rights over them, must be notarized and registered, otherwise it is not valid."

of "Labor's theory", which argues that through the mixing of work with property, the property is obtained from the person who possesses it for a long time.¹The positive side of labor theory is that it constitutes a sufficient basis and has great value for justification in the case of possession in good faith and in bad faith one, since in both cases we have a combination between the work of the holder and the property. Always acquisitive prescription promotes 'the use, maintenance and improvement of Natural Resources'²Acquisitive prescription encourages both property owners to exploit their property and to take care for it, but at the same time promotes the third persons to exploit abandoned lands if owners are not properly taking care for them. So acquisitive prescription, manages to create legal certainty and the maximum utilization of the property, promotes economic and social stability. Shortly, this is called the "incentive effect" (the theory that by Stake justifies prescription by the adverse effect that this institution has on the future behavior of the owner and other entities in society.)

The main criticism of this theory is that firstly it does not ensure that the way the property has been used from the holder, was the best way which could have increased the productivity of land. Secondly, it does not always mean that the fact that the owner hasn't been using the land, has led to lower productivity. Maybe sometimes the best thing to do is leaving the land without exploiting it. (Bouckaert & Depoorter, 1999)

Some authors (Burns, 2011) suggest that the state must find other ways to increase the productivity of land and property in general and should not be based on this institute.

Secondly, this theory is sharply criticized by scholars, because it represented a solid basis to justify the prescription before the XX century. But this justification can not be still valuable in the XXI century, where the primary purpose of the society is not the encouraging of the exploitation of land use, but its usage in the most productive way possible (Stake, 2001)

Thirdly, another critic of this justification is based on the fact that in civil law (including the Albanian Civil Code) as well as in the beginning of the application of this institute in the common law, the holder is not obliged definitely to invest on the property (especially on land) to win its ownership with acquisitive prescription. It is sufficiently for him to act as the owner, to care for its maintenance and use it. In these cases, back then, the exploitation could even lead to reductions in the market value of the real economy.

Fourthly, not always the actions of the holder lead to increased productivity. Some actions (like the paying of taxes or the removal cenusue ownership), suffice to qualify the the fact that the unlawful possessor has been acting as the owner. But these actions do not result in increased productivity of the land. (Clarke, 2005)

Fifthly, there are authors who think that this excuse applies only in some exceptional cases, when dealing with abandoned and unused land. But not in all the cases the application of this justification can be valid, especially in cases of natural resources .

In conclusion we can say that while the justification for the exploitation of the property may be still valid today for movable properties, for the land that excuse is not so much valuable. What in the literature is often known as the "Highest and best use " of land, today does not necessarily mean the planting and processing of land. In some cases, leaving the land bare, waiting to increase its value, may be the best option in today's market land (Martin, 2008) but also it's exploitation can bring irreversible consequences in nature. In this way today even the first justification, that prescription condemns the property owner is no more valid.³

¹ According to Merrill, acquisitive prescription is "a social policy favoring 'active' owners of property, who develop or exploit their land, rather than 'passive' owners."

² Burns, 2011, page 809

³ Martin, 2008, page 3" Thus, perhaps the titled owner who is not "using" the land is being civic-minded and responsible and should not be punished by giving an advantage to a trespasser."

c. If there is created legal certainty, there are reduced the costs of research and transactions.

The reduction of the costs of transactions for the transfer of ownership has been one of the main goals set forth explicitly in one of the laws that recognized for the first time the institute of limitation in medieval England.

d. There are decreased the costs of proving in court

Evidence can be lost over time and this not only undermines the legal security but increases the costs to prove in court the parties claims. So one of the benefits of acquisitive prescription is that it facilitates the proof of ownership in the trial and thus it increases the efficiency of the judicial process (Williams, 2009)

But in recent years, the development of technology and computing has made it easier the storage and has reduced the storage costs of evidence. That is why this excuse has no more value with the development of information technology (Bouckaert & Depoorter, 1999).

Despite critics we think that lowering the costs of the judicial process and increasing the guarantee of evidence can be achieved by prescription, and this excuse still holds true today. "The quality and quantity of evidentiary material deteriorates with time and the parties will have to bear greater litigation expenses to find, or corroborate, evidence.."¹

5. Moral Justification

The moral justification of prescription is based in some way on its other justifications. This justification is based on the connection that is created between the owner and the holder (this relationship is established even if the two have never met and been introduced to one another). The owner's conduct (his silence) has left the holder understand that they can continue to exercise their possession in the future. (Bagley & Clarkson, 2003) The most vulnerable part in this collusion is the possessor, who has understood through the owner's behaviour that has all the right to possess continuously the property without being violated by anyone, even by its own owner.

Some researchers agree that prescription can not have a moral justification (Marais, 2011). But the law can not be always in conformity with the moral. Acquisitive prescription in fact is not an ethic institute. But the law aims to resolve conflicts and acquisitive prescription is an institute which performs at his best this aim. The theory of Utilitarianism constitutes a sufficient basis for finding a certain moral justification to prescription, which is intended to achieve the common good by any legal action and institute. "It has been suggested that the policy is to reward those using the land in a way beneficial to the community"²

According to Bentham, the father of Utilitarianism theory, there is a link between recognition of the right of ownership in society, and security and happiness in general in a community. That is why to achieve welfare and an efficient utilization of land it should be applied necessarily the institute of acquisitive prescription. The Utilitarianism theory has as its sub-section "Law and economics" theory. The latter aims to achieve the greatest usefulness called "economic efficiency". Whereas the first theory maximizes the usefulness achieving the greatest happiness for the greatest number of people. Both these theories constitute a reasonable basis to justify the prescription.

Milli one of the leading scholars of the theory of utilitarianism says: "Possession ought to be recognised as ownership if it has not been challenged within a "moderate number of years."³ Through prescription there can be avoid the social conflicts, since holders will tend to reach up to the use of violence, to regain possession of an item which they have possessed for so many time. But the avoidance of social conflicts and achieving peace in society is not a sufficient justification in the case when the state is the illegitimate possessor. The achievement of the social peace is estimated by

¹ Foncello, 2005, page 687

² Henry W. Ballantine, *Title by Adverse Possession*, 32 HARV. L. REV. 135, 135(1918)

³ Marais, 2011, page 206

many authors as the scope of application of acquisitive prescription in public international law ¹So being applied in international law, prescription provides "the fundamental interests of the Stability of territorial Situations from the point of view of order and peace" ²

The main criticism of moral justification is that there can be no ethic found in this theory because the "squatters" are compared with thieves. But there are some scholars (Gardiner ..) who think that the squatters should be evaluated, for being part of the society who have managed to find their own solution to their problems, to which the state has provided for years no solution at all.

There comes a great contribution to the society from acquisitive prescription, because items left in limbo (for example the abandoned houses) are restored by the holder, which not only makes these houses part of the immovable property market, but also increases their value in the market, and contributes to the growth of the value of the neighboring houses, causing a very positive impact on the overall economy of a country (Heap, 2010)

Despite moral contradiction of this institute, we can say that its usefulness justifies the lack of ethics. To conclude, we can mention the fact that in several decisions of the US Supreme Court it is recognized that this doctrine has no logical and moral base, but is necessary in resolving the conflicts (Teo Yin, 2008)

6. Psychological justification

The psychological justification of acquisitive prescription is based on the theory of "loss aversion" and "experimental psychology". (Bagley & Clarkson, 2003; Stake, 2001)

This justification has to do with the personal connections that are created between the holder and the property (especially with the land). The core of acquisitive prescription is the human instinct, and the man becomes extremely connected with an item that he has used for far too long. This idea was supported strongly from Holmes in his famous statement that the property after a long possession "takes root in your being". ³According to experimental psychology theory, "the doctrine places the loss on the person who will suffer it least—the person whose roots are less vitally embedded in the land." (Stake, 2001)

Loss-aversion theory says that because "the disutility of giving up an object is greater than the utility of acquiring it", then the difference between WTA (Willing to accept) sum and WTP (Willing to pay) is always positive.

Psychological justification is correlated with what is called the "endowment effect", which Holmes has referred as the first reason justifying acquisitive prescription. His idea was backed by other scholars, especially Stake. This effect it has in its essence the fact that "people demand more to give up an object than they would offer to acquire it". ⁴

7. The judicial process that is undertaken for the recognition of ownership, plays an important role to justify the doctrine of adverse possession:

a. In order for the property to be acquired by acquisitive prescription there must be sued an indictment or a counterclaim (the latter in the event that a judicial process has been initiated earlier against the possessor) by the possessor of the property. The judicial process that takes place is a further guarantee that, the fact that you take the property by the owner and it is won by the possessor, is in compliance with the material and procedural law. That is why the judicial process that is conducted and the enforcement of the procedural law is very important. A regular judicial process promotes a behavior in accordance with the law. (Martin, 2008)

¹ Not only it is accepted the application of acquisitive prescription over land owned by another owner, but on land called "terra nullius" In the latter case we have the birth of a new institute, which de Vischer calls "consolidation of historic titles".

² Lesaffer, 2005, page 52

³ Stake, as well, supports this idea when he says that through biological evolution the human beings create continuous and sustainable links with the property.

⁴ Stake, 2001, page 2459

b. The acquisitive prescription urges the owners to refer, as soon as possible, to the claim for restoration or return of possession. (this is explained by the theory of the "incentive effect" of Stake).
c. It is true that acquisitive prescription can not reduce the number of conflicts, but it can reduce the number of conflicts in connection with lawsuits seeking redress from the owners against illegal possessors.

d. The material and procedural law provides that the decision of the Court, which recognises the ownership by acquisitive prescription, has retroactive effect. So if a property is earned by acquisitive prescription, the acquisition of ownership has ab initio effect, from the moment the possessor started to enjoy the object. This criterion facilitates the application of this institute to third parties, which may have undertaken transactions with the possessor, thinking that he is the true owner. (BI Report, 2006)

8. Transitional Problems can arise if this institute is entirely eliminated.

It was Stake in his study of 2001 that has supported this excuse, saying that now this doctrine has become part of the system of law and can not be eliminated without bringing serious consequences in the whole system of law in general. In conclusion we can say that despite the fact that the above excuses were valid centuries ago and still are a reasonable basis for the institution of acquisitive prescription, in the future there is little chance that they will still remain sufficient justifications.¹ Therefore, it is necessary to carry out studies in various countries to suggest the problems that have arisen over the years regarding the application of this institute in practice.

IV. The application of acquisitive prescription for other law institutes.

The more it is suggested that an institute of law can be applied in different branches of law, even being applied by analogy, the more based is the conclusion that this institute has a solid base in the system of law.

1. Some authors believe that acquisitive prescription should be applied in the case of intellectual property (Bagley & Clarkson, 2003)

2. Other scholars suggest applying prescription for items of cultural heritage, passed from one state in another state. (Doyle, 2009)² In this case, if the object is displayed openly to the public for a period of time, acquisitive prescription increases the safety of the right of ownership, the cultural heritage is propagated and one of the main goals of acquisitive prescription is achieved, the encouragement of the effective and efficient exploitation of objects (Doyle, 2009)

3. There are some researchers who agree that there is adequate opportunity that acquisitive prescription can be applied in the field of public international law. (Lesaffer, 2005).³

But there are authors who believe that prescription should not be applied in other analogous situations (ie application of the law by analogy) as this may lead to uncertainty and disputes (Turley, 2013). In any case, even why the application of acquisitive prescription in other areas the law is limited, some few cases of its application indicate the acceptance of the legitimacy of this institution by scholars of all branches of law as well as the existence of a reasonable basis in the essence of this doctrine.

¹ Stake, 2001, page 2455 "regardless of how well they served in the past, none of the justifications discussed so far will be entirely satisfactory in the future, as the same benefits can now be achieved in less costly ways."

² The author cites the case of the Elgin Marbles, which were removed from the Parthenon (cultural monument in Greece). They were sold to the UK by Lord Elgin, the ambassador of the United Kingdom in the Ottoman Empire, in 1816, who claimed that these marbles had been removed from the Parthenon under a royal mandate issued by the Turkish Sultan. Greece in 1980 he made a request to recover these marbles, while England aims to hold them. One of the argumentations made by England is that it has acquired them by prescription, possessing them for over 200 years.

³ In this area of law, acquisitive prescription is applicable in the cases when "the result of the peaceable exercise of de facto sovereignty for a very long period over territory subject to the sovereignty of another" (Lesaffer, 2005, page 46)

VII. Acquisitive prescription costs.

Despite the continuous excuses for this institute, a summary of the costs of this doctrine will give us a clearer view of the true value that acquisitive prescription has for the society.

First, the cost of monitoring the property consistently (especially the monitoring of land). So even if the owner lives off his property, he should monitor his property, finding any possessor that may be exploiting the land illegally. (Bouckaert & Depoorter, 1999; Gardiner ...; Stake, 2001)

Secondly, it isn't provide the right of the owner to obtain compensation in the case of acquisitive prescription. Oftentimes acquisitive prescription is seen as too great a cost to the owner. The lack of compensation to the owner was the main reason that prompted Great Britain to claim before the ECtHR the inconsistency between the institute of prescription and Article 1 of Protocol No. 1 of the ECHR.¹ The only state that provides for compensation is Sweden, only if the owner whose property has been taken by force against his compliance, sues the state to receive compensation within a period of 10 years from the entry of the holder in control of the property.² In Spain, as well, there is a right of the juvenile owner to sue his legal representative for compensation if, due to his negligence, the property is acquired by a third person with prescription.³

The lack of compensation is justified by the fact that the prescription has retroactive effect. The owner may not claim compensation on a property to which he was legally considered lost from the moment that the third person came into possession of the item.

Third, it promotes the destruction of natural resources.

Although many authors claim that in fact acquisitive prescription promotes the utilization of natural resources (Burns, 2011; Clarke, 2005; Sprankling, 1994), in fact, especially by the scholars of the XXI century, it has been claimed that prescription in fact damages natural resources. The promotion of the degradation of natural resources, which are state property, constitutes one of the greatest risks of prescription. (Gardiner, ..)

Although acquisitive prescription helps the exploitation of land, this consequence is contrary to the principles of ecologists for the preservation of ecological zones and the inviolability of cultural heritage areas. Hereupon acquisitive prescription has a negative aspect, because it can affect natural habitats. This can be averted if prescription isn't applied in undeveloped ecological areas or there is limited its application only in urban areas. (Williams, 2009)

Fourth, similar to the above cost, is the case when the property (although it isn't a natural resource) has more value in the market if it remains unused "In some cases" the best use of land is no use at all "(Stake, 2001). But the Institute of acquisitive prescription promotes the exploitation of land from the possessor, with the aim to obtain it through the passing of time. This is a great cost not only because the land is irreversibly transformed but it also encourages the occupation of land by illegal possessors to the detriment of the legal owner. Some scholars call it as an incentive to theft (Stake, 2001)

Fifthly, there are costs for the accomplishment of the judicial process whereby ownership will be recognized to the holder because he has earned it by acquisitive prescription. Acquisitive prescription is determined through a declaratory judgement of the Court, which has retroactive effect. That is why a consolidated judicial system is a necessity. But it should be noted that the system of law in Albania has a lot of problems. That is why one of the main risks of the application

¹ The issue *J.A. Pye (Oxford) Ltd v United Kingdom* urged the UK to do a study about the fact that what is predicted in the world about the issue of compensation of the owner, in case of application of adverse possession. The Report BI, 2006 was prepared. This report made a comparative analysis of the institution of acquisitive prescription in several countries Hungary, Poland, Germany, Netherlands, Spain, Sweden, France, Australia, New Zealand, United States and Canada.

² Report BI, 2006

³ However the possessor will be recognized as an owner if the legal criteria are met. This criterion is applied only in Spain and not in other countries of the civil law, including Albania. In these countries prescription doesn't run against disabled persons but the Roman rule "*contra non valentem non agere prescription*" operates.

of this institute in Albania, and also in all the countries with a unconsolidated judicial system, is the risk of announcement of a court decision that could affect the essence of the right of property through unfair procedures.

Sixthly, prescription reduces the usefulness because it discourages the owners to let third persons possess their property.¹ But despite the costs, prescription promotes legal security in society, transforming into de jure situations, the de facto situations that have persisted for a long time. This result is more than an enough criterion to conclude the usefulness of prescription, regardless of its costs.

VIII. The application of compensation in the case of acquisitive prescription.

It seems as if the lack of compensation is contrary to a basic principle of law that states that: the right of any one begins where the other's right ends. As a scholar accentuated "No one has the right to use land in such a way as to injure that of another."² But why until now the institute of limitation has not provided the recognition of a right to compensation? In the majority of cases, the illegal possessors without title are people who have occupied land from someone else because they didn't have the means to live. The recognition of the right to compensation would be completely inappropriate in this case. This is one of the most frequently cases encountered in Albania after 1990-s where many owners abandoned their lands and emigrated abroad, while squatters occupied them and builded houses where they could live. Secondly, if the right to compensation was entitled, it could contradict the very essence of this theory, which means that through acquisitive prescription the person becomes the owner from the moment that he started to possess it. So how can he be obliged to pay for something, the owner of which he has been from the beginning of the possession.

In general, the researchers suggest that compensation can not be applied because of the fundamental differences that exist between prescription and expropriation. These difference relates to the first justification of prescription, the neglectful demeanor of the owner. The negligent behavior of the owner, who doesn't take care for his property, shows that he is not interested to it. That is why the taking of his property will not have a huge impact on his interests. Contrary to this, in the case of expropriation, the taking of the property has serious consequences for the owner because he was constantly using it. Also, according to the researchers, the application of compensation as a basic principle in the case of acquisitive prescription should not be accepted as this would conflict with the very essence of this institute. "Indemnification would require an inquiry into the value necessary to fairly compensate all parties who have an interest in the property, interfering with the lost evidence and quieting title rationales."³ This is because there will not be compensated only the owner, but all the parties whose interests have been damaged during the possession period. (For example third parties that may have signed oral or written contracts with the legitimate owner of the property, contracts that have been valid during the time of the possession). We also saw prescription as an institute that "punishes" sleeping owners for their inaction. But if the right to reimbursement was acknowledged the institute of prescription does not punish these owners, but instead it rewards them for their negligence. This would conflict with the "sleeping theory". But there are scholars who agree that a careful owner would not be inhibited by the conservation of his property, even if he was entitled with the right to compensation. It is also argued by some scholars (Foncello, 2005) that the recognition of the right to compensation could affect third parties who have entered into interaction with possessor. They will depend on the willingness of the holder, who if wasn't willing or wasn't able to pay the amount of compensation would violate the interests of those third parties too.

The lack of compensation was even the reason why England claimed before the European Court of Human Rights that the acquisitive prescription is contrary to the European Convention on Human Rights. But the European Court concluded that prescription represents an institution in the public interest "finding that while the English law of adverse possession impacted the company, the original land owner, the company was not "deprived" within the meaning of Article 1. Additionally, the Court concluded that the law properly struck a balance between public interest and individual rights."⁴

¹This is especially true in the case when the owner allows one of his relatives, to use the property for a defined period of time, without a written agreement. Then the relatives after 20 years that they have behaved as property owners (especially after the owner has died and it is difficult to prove how the relatives entered into the possession of the land), can gain the ownership by prescription in Court. This is too much of a risk for the owner.

² Foncello, 2005, page 695

³ Foncello, 2005, page 690

⁴ Williams, 2009, page 603

But despite the above causes are there any situations in which there can be recognized a certain amount of compensation to the party injured from the application of the institute of prescription. Some of these cases are mentioned briefly below.

First, compensation may be provided in the case when the state institutions are the holder of private property (Merrill,; Foncello, 2005; Dick, 2007) In the case where the State is the unlawful possessor of the land, the justification of 'Reliance interest "is not worth much in this case. There can not be perceived that there has been created a link between the personality of the state bodies and the private property possessed. The taking of the property in this case, which passes on the property of the state organs, may be considered as a taking of land " to the public interest ".

In the period of Colonial America, the state had the right to gain land ownership, without the obligation to pay compensation, starting from the principle that a citizen loses the right of ownership in favor of the state on the basis of the principle of "the general right of the whole society". (Dick, 2007) We argue that if the right of compensation wasn't acknowledged in the cases where the state is the illegal possessor, it would conflict with the purpose that the state. He has has to protect it and not to infringe this right.

Secondly, there are authors who think that prescription in bad faith should be canceled entirely. There must be recognised only the right of the possessor to be compensated for the investments he has made on the land, which the owner conscientiously has left to be performed.

Third, it must be recognized the compensation for the investments the holder has committed, in case the holder it fails to benefit the right of ownership, at the end of the lawsuit. So regarding the investments that he has performed on the land, which have added value to it, the holder, even if he does not meet the criteria for acquisition of property by prescription, has the right to request the return of these investments. But if he has made changes that have reduced the value of the object, we think that he should be forced to compensate the owner for the reduction of this amount.

Fourthly, there are authors who believe that injustice is not related so much to the fact that there is no obligation to pay a compensation to the owner, but to the fact that even though the property is registered in the Filing Office of immovable property and the owner may have paid yearly the fees for the land, the state has taken no measures to protect and inform the owners for the illegal possessors.¹

Fifthly there must be applied compensation in the case of bad faith possession (and not not when the possessor is in good faith) as this possessor knows that he is violating the right of another person since the first day that has started to exploit someone else's property. In this case there can be applied the institution of "unjust enrichment" (Martin, 2008; Stake, 2001), as one of the parties s damaged contrary to the principle of rule of law.² In this case the doctrine suggests that, in case to the owner is caused a serious and irreparable damage, there must be payed from the holder in bad faith the full value of the land and all the taxes that the owner may have paid during his possession.

Regarding the amount of compensation, in the few cases that it is accepted, we must point out one important fact. This fact is that the holder becomes the owner from the date that he entered in the possession of the property. So the value of the compensation will be the value of the property at the moment the holder entered into possession of the item. As one scholar accentuated "the property owner may *only* suffer a confiscation of those interests that were part of his title to begin with."³

In conclusion it should be said that despite that this doctrine contains many contradictions, it can not be eliminated completely. What must be done is the disappearance of "Perception of unfairness" (Martin, 2008) and recognizing an opportunity for compensation depending on concrete cases against the most vulnerable party.

IX. CONCLUSION

¹ Law Reform Commission Hong-Kong, 2012, page 26, "The unfairness... lies not in the absence of compensation, although that is an important factor, but in the lack of safeguards against oversight or inadvertence on the part of the registered proprietor."

² In a case in the Court of Colorado, Kirlin vs. McLean case, the holder did not win the property by prescription, although all the legal criteria were met. He had to pay the market value of the property to the owner and the tax property that the owner had payed for many years.

³ Foncello, 2005, page 694

The debate whether acquisitive prescription is or not justified and useful will continue to exist for how long this institute shall be applied. But again its usefulness can not be questioned. An institute of law can never satisfy without exception all members of society. As Williams emphasized "There is no way any process, any criteria [or] any land law would please everyone."¹ Precisely for the reasons that serve to justify acquisitive prescription, the scholars liken it to expropriation without compensation, or "constructive expropriation."² It is indisputable that prescription, despite the contradictions will continue to exist as an institute, because to deprive a holder who has used the land for so long (with the tacit approval of the owner) will bring very serious consequences for him.

Acquisitive Prescription is an institution born out of necessity and the usefulness that he has brought to society, is undeniable. But at the same time the existence of this institution can affect the manner the society will behave in the future (some researchers suggest that it promotes theft of property in the future). So, the law is a tool that reflects the behavior of the people in society but at the same time it shapes it.

Although the doctrine has many researchers who argue about the fact that will this institute be justified in the future (Stake, 2001), again we are confident that this institute will continue to exist for a long time, due to excuses mentioned above and the importance that the right of property ownership has in all countries in the world. An ownership right that remains idle for a long time not only has no value, but rather is harmful to the society. That is why the acquisition of the property right from the holder, who for many consecutive years has fulfilled all the obligations of the owner is the right solution the law provides.

References:

- [1] Association of Ontario Land surveyors (AOLS), 'Seminar on Adverse Possession', 1977
- [2] Bagley.C & Clarkson.G "ADVERSE POSSESSION FOR INTELLECTUAL PROPERTY: ADAPTING AN ANCIENT CONCEPT TO RESOLVE CONFLICTS BETWEEN ANTITRUST AND INTELLECTUAL PROPERTY LAWS IN THE INFORMATION AGE, *Harvard Journal of Law & Technology* Volume 16, Number 2 Spring 2003
- [3] Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 667 (1988)
- [4] Boudewijn Bouckaert en Ben W.F. Depoorter, "ADVERSE POSSESSION - TITLE SYSTEMS", *Center for Advanced Studies in Law and Economics*, 1999.
- [5] Report by the British Institute of International and Comparative Law for Her Majesty's Court Service September 2006, ADVERSE POSSESSION
- [6] FIONA BURNS, "ADVERSE POSSESSION AND TITLE-BY-REGISTRATION SYSTEMS IN AUSTRALIA AND ENGLAND, *botuar te Melbourne University Law review*, Vol.35, 2011
- [7] JESSICA A. CLARKE* Adverse Possession of Identity: Radical Theory, Conventional Practice, OREGON LAW REVIEW [Vol. 84, 2005]
- [8] Carol M. Rose, *Possession as the Origin of Property*, 52 UNIV. OF CHI. L. REV. 73, 81 (1988) ("[C]lear titles facilitate trade and minimize resource-wasting conflict."
- [9] John G. Sprankling, *An Environmental Critique of Adverse Possession*, 79 CORNELL L. REV. 816, 816 (1994).
- [10] L'usucapione, Rassegna giurisprudenziale e dottrinarina Codice civile – Libro III della proprietà – Titolo VIII del possesso – sezione III – artt. 1158 – 1167) *Avv. Renato D'Isa* 18/02/2013

¹ Williams, 2009, page 598

² What is the meaning of "constructive expropriation theory". "This doctrine caters for the situation where certain state interference results in a serious loss or limitation of property for an owner. Such interference is then viewed as a *de facto* expropriation that requires compensation, even though the state – through the regulation – may not intend to expropriate the property." (Marais, 2011, page 288)

- [11] OWNERSHIP BY DISPIAY: ADVERSE POSSESSION TO DETERMINE OWNERSHIP OF CULTURAL PROPERTY *Megan B. Doyle*, *The Geo. Wash. Int'l L. Rev.*, Vol. 41., 2009
- [12] ADVERSE POSSESSION AND TAKINGS SELDOM COMPENSATION FOR CHANCE HAPPENINGS *Martin J. Foncello**, *SETON HALL LAW REVIEW* Vol. 35:667, 2005
- [13] Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 477 (1897)
- [14] REASONABLENESS IS UNREASONABLE: A NEW JURISPRUDENCE OF NEW YORK ADVERSE POSSESSION LAW *Jason Greenberg**, *CARDOZO LAW REVIEW* [Vol. 31:6, 2010
- [15] Davina Heap, "Cultivating a common ground for adverse possession and the common law rules within it.", Dissertation, Manchester Metropolitan University, 2010
- [16] Larissa Katz "The moral paradox of adverse possession. Sovereignty and revolution in property law" (2010), 55, *McGill Law journal*, page 47.)
- [17] A Critique of the Doctrine of Adverse Possession Hong Yin Teo*, Australian National University, Cross sections | Volume IV 2008
- [18] CONSTITUTIONAL ADVERSE POSSESSION: RECESS APPOINTMENTS AND THE ROLE OF HISTORICAL PRACTICE IN CONSTITUTIONAL INTERPRETATION JONATHAN TURLEY*, *Wisconsin Law Review*, 2013-965 [wisconsinlawreview.org/wp-content/files/2-Turley.pdf](http://www.wisconsinlawreview.org/wp-content/files/2-Turley.pdf)
- [19] Henry W. Ballantine, *Title by Adverse Possession*, 32 HARV. L. REV. 135, 135 (1918)
- [20] REACHING BACK TO MOVE FORWARD: USING ADVERSE POSSESSION TO RESOLVE LAND CONFLICTS
- [21] IN TIMOR-LESTE Charlotte C. Williams, 2009 Pacific Rim Law & Policy Journal Association VOL. 18 NO. 3, 21. Christophe Buffet Adresa: <https://sites.google.com/site/prescriptionusucapion/>
- [22] CONSIDERATIONS CONCERNING THE CONSTITUTIONAL AND EUROPEAN DIMENSIONS OF THE OWNERSHIP RIGHT AS STATED BY THE
- [23] ROMANIAN JURIDICAL SYSTEM SEVASTIAN CERCEL, *Masaryk University*, 2010 <http://www.law.muni.cz/content/cs/proceedings/>
- [24] THE LAW REFORM COMMISSION OF HONG KONG ADVERSE POSSESSION SUB-COMMITTEE CONSULTATION PAPER ADVERSE POSSESSION This consultation paper can be found on the Internet at: <<http://www.hkreform.gov.hk>> December 2012
- [25] *Argument from Roman Law in Current International Law: Occupation and Acquisitive Prescription* Randall Lesaffer, *The European Journal of International Law* Vol. 16 no.1 © EJIL 2005
- [26] ADVERSE POSSESSION: PRACTICAL REALITIES AND AN UNJUST ENRICHMENT STANDARD by Susan Lorde Martin, *Real Estate Law Journal*, Volume 37, Number 2, Fall 2008
- [27] Nagoya University, Graduate School of Law, The Implementation of Cambodia's, Laws on Land Tenure: Squatters on Private Land, Name of the Student: HAP Phalthy, June 25, 2007
- [28] Sherman, Charles P., "Acquisitive Prescription: Its Existing World-Wide Uniformity" (1911). *Faculty Scholarship Series*. Paper 4442., http://digitalcommons.law.yale.edu/fss_papers/4442
- [29] MAKING SENSE OUT OF NONSENSE: A RESPONSE TO ADVERSE POSSESSION BY GOVERNMENTAL ENTITIES, Andrew Dick, *NEVADA LAW JOURNAL*, Vol. 7:348, 2007
- [30] Robert Ellickson, "Bringing Culture and Human Frailty to rational Actors. A critique of Classical Law and economics", 65, *Chicago kent law review* (1989), pp 38-39
- [31] SQUATTERS' RIGHTS AND ADVERSE POSSESSION: A SEARCH FOR EQUITABLE APPLICATION OF PROPERTY LAWS, *Brian Gardiner*, *IND. INT'L & COMP. Law. Review.*, Vol. 8:1

- [32] Acquisitive Prescription in View of the Property Clause, Ernst Jacobus Marais, Dissertation, August 2011, Stellenbosch University <http://scholar.sun.ac.za>
- [33] Panesar, S. and Wood, J. (2007) Adverse possession and the European Convention on Human Rights 1950 Protocol 1 art.1. *Coventry Law Journal*, volume 12 (2): 41-54
<http://www.coventry.ac.uk/bes/law/about%20the%20school/Pages/LawJournal.aspx>
- [34] Stake, Jeffrey E., "The Uneasy Case for Adverse Possession" (2001). *Faculty Publications*. Paper 221.
<http://www.repository.law.indiana.edu/facpub/221>
- [35] Efficient Trespass: The Case for 'Bad Faith' Adverse Possession, Lee Ann Fennell, 2005,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=800529
- [36] Merrill, Th. "Property rules, liability rules and adverse possession", 1984,
<http://heinonline.org/HOL/LandingPage?handle=hein.journals/illr79&div=45&id=&page=>