



Usucaption through Illegal Possession of Goods

Mariana-Alina ZISU¹

Rodica-Raluca ȘTEFĂNOAIA²

Abstract: *Usucaption is a fundamental legal principle in civil law, which allows a person to become the owner of an asset by exercising continuous and uninterrupted possession over it for a specified period, established by law. This mechanism is based on the idea that, over time, possession of assets can create a legitimate expectation of ownership, with the aim of ensuring stability and security in the circulation of assets. However, the concept of usucaption becomes more complex when discussing the illegal possession of assets. Illegal possession refers to situations in which an asset is held without the consent of its owner, often through acts of theft, fraud or breach of trust. In such cases, the question arises whether a person who holds an asset illegally can acquire ownership of it through usucaption.*

Keywords: *usucaption; criminal; goods; illegal; fraud*

1. Introduction

Possession is a fact, but one of those facts to which the law bows with great goodwill, and this through prescription, which allows, one after another, the acquisition and loss of rights. Prescription and possession are basically instruments for measuring the strength and longevity of rights, especially those considered perpetual (Jestaz, 1984).

¹ Legal adviser at the Lostun Răzvan Laurian Individual Notarial Office, member of the Association „College of Legal Advisers Suceava”, Romania, Mălini village, Oborului street no. 968, Suceava county, e-mail: stefanoaia.raluca@yahoo.com

² Legal adviser PhD in progress, member of the Methodological and Professional Guidance Commission of the “College of Legal Advisers Suceava” Association, member of the Methodological and Professional Guidance Commission of the Federation “Order of Legal Advisers from Romania”, Romania, Corresponding author: stefanoaia.mariana@yahoo.com.



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Before proceeding to the debate on the usefulness and legitimacy of usucaption, it is appropriate to review the concept of this complex legal construction widely addressed in the specialized literature. Usucaption (also called acquisitive prescription) has been defined as a way of acquiring ownership or other real rights with respect to a thing, through uninterrupted possession of this thing throughout the time fixed by law (Bârsan, 2013, p. 385). Other authors define this institution as a way of acquiring the right of ownership through the long-term possession of a movable or immovable asset under the terms and conditions provided by law (Baieş and Băieşu ş.a., 2005, p. 90). English authors offer us a definition in a less technical style – Usucaption is the institution that allows the possessor of a plot of land, who is not the true owner, to acquire the right of ownership over it without the latter's consent and without paying compensation, as a result of possession for a period provided by law, at the end of which even the true owner will not be able to file actions in court to "evacuate" the possessor (Depoorter Volume 5, p. 183). Therefore, usucaption is one of the effects of possession as a state of fact (possession creates a presumption of ownership in favor of the possessor; acquisition of ownership by usucaption; the possessor in good faith acquires ownership of the fruits of the fruit-bearing property he possesses; acquisition of ownership by occupation; actions of the possessor).

Usucaption is a fundamental legal concept, which allows a person to acquire ownership of an asset by exercising continuous and uninterrupted possession for a period specified by law. This principle aims to ensure the stability of property relations and to protect the legitimate expectations of property owners.

In the context of usucaption, the illegal possession of assets brings a complex and controversial dimension. Illegal possession refers to situations in which a person possesses an asset without the consent of its owner, often through acts of theft, fraud or breach of trust. This form of possession is considered illegal and therefore raises questions about the possibility of such possession leading to the legal acquisition of property rights.

Therefore, the most important aspects of the analysis of usucaption of goods consist of:

a. Good faith and usucaption - An essential element of usucaption is the condition of good faith. This implies that the person who owns the property must believe that he has the right to own it. Illegal possession contradicts this premise, thus excluding the possibility of usucaption applying.

b. Protection of property rights - The right to property is a foundation of the legal order, and usucaption should not allow the legitimization of illegal actions. By excluding illegal possession from usucaption, the law protects the rights of owners and ensures the stability of property relations.

c. Involvement of legal liability - Illegal possession of property not only excludes the possibility of usucaption but also attracts criminal liability for the acts committed. This serves as a mechanism to deter illegal behavior and encourages respect for the rights of others.

d. Social and economic consequences - A clear distinction between usucaption and illegal possession helps maintain a healthy business environment and encourage investment, as individuals have confidence that their rights will be protected.

The interaction between usucaption and illegal possession of property highlights the complexity and importance of these concepts in civil law. This introduction provides a framework for understanding the legal challenges and implications associated with illegal possession, as well as the protection of property rights in society. Therefore, the rigor of respecting fundamental rights and freedoms (Corsei, Zisu and Toncu, 2023, p. 55) leads to increased trust in the justice system because it protects its citizens through the correct application of property rights.

2. Illegal Possession of Goods to Find its Applicability to the Institution of Usucaption

Illegal possession of goods is a situation in which a person or entity possesses an asset without the consent of its owner, often through illegal acts, such as theft, fraud or abusive occupation (Radu, 2020, p. 125). In the context of usucaption, this form of possession brings a series of important legal and ethical implications.

Usucaption is a legal mechanism through which a person can acquire ownership of an asset through continuous, uninterrupted and bona fide possession for a period established by law (Iliescu, 2021, p. 47). The essential conditions for usucaption include:

- **Effective possession of the asset** - The holder must have physical control over the asset.
- **Good faith** - The possessor must believe that he has the right to possess the property, without knowing that it is stolen or obtained through illegal acts.
- **Publicity** - Possession must be open and visible, not secret.

Therefore, illegal possession excludes the possibility of acquiring ownership by usucaption for the following reasons:

- **Lack of good faith** - People who possess property illegally do not meet the condition of good faith, because their actions are contrary to the law. For example, a thief who steals a car cannot become its owner by usucaption, even if he has owned it for a long period of time.

- Protection of property rights - The exclusion of usucaption for illegal possession is intended to protect the rights of legitimate owners. Owners have the right to claim their property at any time, regardless of the period of possession of the property by the illegal possessor.
- Legal and Criminal Aspects - Illegal possession of property attracts criminal liability, and individuals who commit illegal acts can face severe penalties, including imprisonment.

This serves as a deterrent to illegal behavior and encourages respect for property rights.

However, its interaction with illegal possession of property brings to the fore a few key considerations that deserve further analysis.

A. The distinction between legal and illegal possession

A fundamental aspect of usucaption is the requirement of good faith. Individuals who possess property illegally, through theft, fraud, or other illegal acts, cannot invoke usucaption to acquire property rights. This distinction emphasizes the principle that illegal actions cannot lead to favorable legal outcomes, thereby protecting the rights of owners and ensuring the integrity of the legal system.

B. Protection of Property Rights

Modern law is designed to protect the property rights of individuals. Rightful owners have the right to recover illegally possessed property, regardless of the duration of possession. This protection not only prevents usucaption of illegally possessed property but also strengthens confidence in the legal system and in the security of property. The right to property is an essential foundation of any democratic and economic society, and its protection is vital for maintaining social order.

C. Involvement in legal liability

Illegal possession of property usually entails criminal liability for the acts committed. People who violate the rights of others may be subject to legal sanctions, including fines or imprisonment. This serves as a deterrent against illegal behavior, promoting respect for property and the rights of others.

D. Social and economic aspects

The exclusion of usucaption for illegal possession contributes to maintaining a healthy business environment and a functioning economy. Ensuring that property cannot be acquired through illegal acts encourages investment and economic development, as individuals and companies can be confident that their rights will be protected. This has a positive impact on social stability and community cohesion.

In conclusion, usucaption through illegal possession of property highlights the importance of respecting the law and property rights. While usucaption can provide a framework for the legal acquisition of property, illegal possession remains excluded, which protects legitimate owners and ensures a fair social order. This distinction is essential for the fair functioning of society and for maintaining trust in the justice system.

3. Purpose of Usucaption

Usucaption, as a legal mechanism, plays an essential role in civil law, with diverse and complex purposes. It facilitates the acquisition of property rights through continuous and uninterrupted possession, thus contributing to the stability and security of property relations. In this detailed analysis, we will explore the main purposes of usucaption, its impact on the legal system, as well as its social and economic implications.

a. Stability of Property Relations

Prevention of disputes: Usucaption contributes to the stabilization of property relations by providing a clear legal framework governing the acquisition of property. This helps prevent disputes between possessors of property and the original owners, as a holder who meets the conditions of usucaption can become the legal owner.

Clarification of rights: By establishing clear terms and conditions for the acquisition of property, usucaption helps to clarify individual rights to property, reducing uncertainty and confusion regarding ownership.

b. Protection of Property Owners

Recognition of bona fide possessions: Usucaption allows for the recognition of ownership rights for those who have held property publicly and in good faith for a specified period. This protects the interests of holders who may, for various reasons, be unaware or innocent of the legal status of the property.

Incentivizing responsible behavior: By providing a legal framework that rewards good faith possession, usucaption encourages individuals to be responsible in managing property, thereby promoting ethical and legal behavior.

c. Facilitating the Movement of Property

Stimulating the economy: Usucaption allows property to be transferred and used more efficiently within the economy. It stimulates the movement of property because people who have owned property for a long time and maintained it can legally acquire ownership, allowing them to invest in and improve it.

Reducing bureaucracy: Legal procedures for acquiring property can often be complex and lengthy. Usucapion simplifies the process by allowing the acquisition of property through possession, thereby reducing the associated formalities and bureaucracy.

d. Promoting Trust in the Legal System

Building trust: By ensuring that people who legally own property can protect their rights, usucapion helps to build trust in the legal system. This encourages people to invest and actively participate in the market economy, knowing that their property rights will be recognized and protected.

Improving social relations: Usucapion facilitates more harmonious social interactions because it reduces property-related conflicts and encourages respect for the rights of others. It promotes a culture of mutual respect and collaboration within communities.

e. Social and Economic Implications

Crime reduction: By establishing a legal framework that protects property rights, usucapion helps reduce property-related crimes, such as theft and illegal occupation. This supports a safer environment for individuals and businesses.

Contribution to community development: Usucapion can play an important role in community development, as it encourages investment in assets and infrastructure. Holders who become legal owners can improve their assets, which can have a positive impact on local economies.

Therefore, usucapion has a multidimensional purpose, having a significant impact on property relations, the legal system and society as a whole. By stabilizing property rights, protecting property owners and facilitating the movement of goods, usucapion contributes to a healthy social and economic environment. This legal mechanism not only helps maintain order and security, but also promotes economic development and social cohesion.

4. Conclusions

Usucapion is an important principle of civil law, which allows the acquisition of property through continuous and bona fide possession. However, the concept of usucapion becomes complex when it is linked to the illegal possession of goods. In general, illegal possession, characterized by the lack of the owner's consent and the intention to violate his right, excludes the possibility of legal acquisition of the right of ownership through usucapion. In conclusion, the justification for usucapion should not be sought in any preference that the law would be willing to grant to "usurpers". On the other hand, the justification for usucapion is found in the interest

of maintaining social order (guaranteeing legal certainty) and of putting an end to a dissociation between the state of fact and the state of law, a dissociation whose prolongation over time would be risky not only for the possessor but also for others, for society in general. On the other hand, it is found in the need to compensate for the insufficiency of the means of proof in the matter of real rights. In addition to the universally recognized value – a way of acquiring property, some authors also indicate a second meaning of the acquisitive prescription, that of a means of proof in the matter of property, more precisely an irrefutable legal presumption of ownership (Marty and Raynaud, 1966, p. 200). However, usucapion removes these difficulties, because the one who manages to prove that he acquired the right of ownership through usucapion no longer must suffer the rigors imposed by *probatio diabolica*.

Finally, usucapion represents an indirect "sanction", directed against the former owner, who, showing negligence, left the good time in the possession of another person for a long time, allowing him through his passivity to behave publicly as an owner. Thus, the owner of the property rights is advised not to hesitate too much in exercising his right.

Based on the arguments and the perennality of the institution of Usucapion in the multitude of legislations in Continental Law and Common Law, we have come to the conclusion that although usucapion is not a common phenomenon in practice, it finds its justification in the charm of the social, moral and legal values that it manifests. And if we are to respond to the generic of this scientific endeavor, the balance certainly tilts in favor of usucapion *patrona generis humani* rather than an *impium praesidium*.

In conclusion, usucapion through illegal possession of goods emphasizes the importance of respecting the law and property rights. Although usucapion can provide a framework for the legal acquisition of goods, illegal possession remains excluded, which protects legitimate owners and ensures a fair social order. This distinction is essential for the fair functioning of society and for maintaining trust in the justice system.

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