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Acquisitive prescription in Albanian legislation and the legal problems it faces with Albanian Constitution and Article 1 of Protocol 1 to the ECHR

Acquisitive prescription in Albanian legislation and the legal problems it faces with Albanian Constitution and Article 1 of Protocol 1 to the ECHR

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1. Introduction.

One of the most basic and important human's right is the right of property. Along with freedom and life it is considered as one of the three natural rights that belong to man by nature. In the Albanian reality, the right of property received a rapid development after 90s because previously, in the old system, the right to private property was limited, even with the Constitution of year 1976 all properties in Albania was declared state property. Nowadays the property enjoys a broad protection, which is sanctioned by the Constitution of Republic of Albania, in Articles 11³ and 41⁴ thereof, and beyond. The Constitution provides that ownership is acquired by gift, succession, purchase, or any other classical way provided by Civil Code⁵. If we refer to the civil law doctrine, some of those ways are regarded as original ways, while others such as derivatives. One of the original ways of acquiring property, which was recognized after '90, is the acquisition of property by prescription without title, known in common law system as adverse possession.

This article begins by giving a general historic review of acquisitive prescription, how it emerged and developed in Roman law. Then it analyses the acquisitive prescription in Albanian Civil Code, and how this institute is applied in Albania. A comparative view on other legislation is given in order to understand how this institute is applied in other countries.

After this, in two other sections is analyzed why, in the way it is enacted in the Civil Code, is in breach of Albanian Constitution and Article 1 of Protocol 1 to the ECHR. The analysis and interpretation is based mostly in the jurisprudence of Albanian Constitution Court and the European Court of Human Rights. At the end, the article brings some recommendations on how this institute should be reformed in Albanian legislation.

2. Understanding the prescription and its origin

Prescription or as it was known in Roman law uses, was a way of acquiring property by possession of the land within a certain time. So, uses was a way of acquiring quiritary land by

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³ Article 11 of the Albanian Constitution provides that "1. The economic system in Albania is based on private and public property, in trade's economy and the freedom of economic enterprise. 2. The private and public property are protected equally. 3. Limitations on freedom of economic enterprises can be done only by law and for important general interests".

⁴ This Article of the Constitution is analyzed in section 5 of this article.

⁵ Article 41 paragraph 2 of the Albanian Constitution.

people who exercised power over things that were not their property, if they fulfilled the legal provisions acquired by *ius civile*⁶.

Usucapio was an *ius civile* institute in *stricto sense* reserved for Roman citizens and brought them the right to ownership over *dominium ex iure quiritium*⁷. To gain land by usucapio it was necessary that some conditions were filled cumulatively, more specifically:

1. **Res habilis (proper object)**⁸. This condition was related to the fact that an object should be able to be gained by prescription, because not everything could be gained by prescription. So could not be gained by prescription *res extra commercium* and provincial lands because on them could not be placed *dominium ex iure Quiritium*, as well as stolen goods (*res furtivae*) and items taken by force (*vi res possessae*)⁹.

2. **Possession (possession)**¹⁰. This condition consisted in the fact of holding the object as one's own and not any kind of possession. It acquired *uti dominus*, or *animus domini* which consisted of willingness to own¹¹.

3. **Tempus (time)**¹². Deadline for prescription was two years for immovable property and one year for other objects¹³. The period of limitation of movable property *res Mancipi* as well *res nec Mancipi* (slaves, animals, etc.), was a year¹⁴.

4. **Fides**¹⁵. This condition consisted in good faith (*bona fides*) and required that the owner had gained possession of the item with the conviction that it had not caused to others an unfair disadvantage. Good faith should have existed at the time of entering in possession because subsequent bad faith did not matter¹⁶.

5. **Titulus (title)**¹⁷. This condition consisted in *iusta causa* or *iusta causa usucapionis* that meant the objective reason based on gaining possession¹⁸.

The institute of usucapio was a way of gaining ownership in Roman law, but as a way of gaining ownership, it applied only to Roman citizens and to lands that were in Italy. Over time began to appear another form of prescription, which originally had only procedural nature. It consisted on preventing or stopping the civil process, extinguishing the possibility of the owner to succeed in the property lawsuit.

The legal consequences of *longi temporis praescriptio* was the passing of time: the claim of the owner was rejected when the person who possessed the land opposed saying he had been in possession of the property for as long as it was provided in this case. So, *longi temporis praescriptio* extinguished the possibility of the owner to succeed with a property claim if the person who possessed opposed it, so it had an extinguishing nature¹⁹. While the prescription was

⁶ A.Mandro, "*Roman law*", Published by "Emal", Tiranë 2005, p.192.

⁷ K.Dhima, "*Roman law*", Published by "Medaur", Tiranë, 2007, p.539.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid,

¹¹ Ibid

¹² K.Dhima, cited above., p.540.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ K.Dhima, cited above, p.541.

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Dr. Ivo Puhani, "*Roman law*", translated in Albanian by the University of Pristina, Pristina, p. 239.

a way of acquiring property, and therefore had a clear profitable nature, *longi temporis praescriptio* extinguished the possibility of the owner to succeed with a claim property if the possessor opposes it, therefore had a clear extinguishing nature²⁰.

However, at the time of Emperor Justinian, fell down all the differences between *res Mancipi* and *res nec Mancipi*, between lands in Italy and lands in the province, as well as differences between Roman citizens and other residents of the Roman state²¹. Because of this transformation, *praescriptio longi temporis* became a way of gaining ownership and merged with *usucapio* defining a term of 10 years for *inter praesentes* and 20 years for *inter absentes* in real estate, while the prescription of movable objects period was 3 years²².

3. Acquisitive prescription in Albanian legislation

Albanian Civil Code provides that acquisitive prescription is a way of gaining ownership over a immovable property. This institute is not new in our legislation because it was provided for the first time in Civil Code of King Zog in 1929²³. Later, the Decree of 1955 “On property”, provided prescription as a way of gaining property but one of the main conditions to be fulfilled was the existence of a legal agreement despite its validity (necessary was only that it should be not prohibited by law). In Article 91 of Albanian Civil Code of 1981 was made the same provision. From this we can realize that during the period of communism, Albanian legislation did not provided acquisitive prescription (known in Albania as acquisitive prescription without a title) but only prescription with title (title was meant by the agreement). Acquisitive prescription was not provided at that time because it was considered a way of stealing the property of another and this was not permitted in a rule of law state.

In the current Civil Code, there are two types of acquisitive prescription. In Article 168 is provided acquisitive prescription with title, which means that at the moment of transferring the property (movable or immovable) there must always exist an agreement to transfer the ownership, despite the validity of the agreement. In Article 169 acquisitive prescription is provided as “The person who has possessed quietly without interruption, behaving as the owner for twenty years an immovable property, becomes its owner”. From this it is quite clear that to gain property with acquisitive prescription four conditions must be met:

1. The object should be immovable, because over movable property this institutes does not apply.
2. The ownership over the object should be continuous and uninterrupted. The possession must also be quite, which means that the possessor should not be disturbed from third parties or the owner.
3. The possessor should behave as the owner. This behavior should be reflected in the outside world but also inside. This means that he should act as the owner towards the world, but also have *animus domini*, or in other words the soul of the owner during the possession²⁴.

²⁰ K.Dhima, cited above, p.544.

²¹ Ibid.

²² Ibid.

²³ Article 2037.

²⁴ A. Nuni, L.Hasneziri, “Civil law, Property”, Tiranë 2010, p. 114.

4. The time acquired by law is twenty years, so the possessor has to possess the item for at least twenty years.

In Article 170 of the Civil Code is provided that “The person that has obtained a land based on acquisitive prescription has the right to file a lawsuit against the former or his heirs in order to recognize his ownership and, on the basis of the relevant court decision, to register the object in *the competent state body*”.

From this provision we can state that the possessor wins the land *ex legge* (because of a law provision) if the four conditions are met and this comes from the words “...that has obtained...”. But in order to register it in the land registry the person should have the relevant court decision, because is the latter that analyzes and confirms if the conditions are fulfilled. The court decision is just declarative and the possessor has the right to file a lawsuit, not an obligation. Anyway as long as he want to register it, he has to go to the court first and then to the Land Registry.

In order to be successful, the possessor has to prove that the four conditions are met. He has to pay nothing to the former owner because law provides nothing, even that the former owner loses his property forever. The law does not require good faith by the possessor, so this institute is applied to both cases, when the possessor has entered in possession with good faith or with bad faith. Law does not provide which are the evidences used to prove the conditions and this means that the possessor can prove the fulfillment of the four conditions with any useful evidence. Because this is a factual situation we believe that the most important evidence is the declaration of the witness. Anyway this should not be the only evidence but the court has to examine carefully if the four conditions are fulfilled.

In Albanian jurisprudence, cases related to acquisitive prescription have not been very often until today. We can state that the random form to claim property on this basis is with a counterclaim. The owner of a land files a lawsuit in the court to recover his land that is possessed by a squatter/possessor. At this point the squatter files a counterclaim declaring that he has gained the property by acquisitive prescription and so he is the new owner of the land. The former owner might lose his land not because of the limitation periods to claim an action to recover property but because another person has won it by acquisitive prescription. Anyway in our jurisprudence the reason we don't find successful claims on this basis is because only last year was fulfilled physically the twenty years of entering into force of the current civil code.

Above we emphasized that during the communism this type of acquisition of property was not known as long as it was considered a way of stealing property. The current civil code entered in force on 01.11.1994, so effectively only in 02.11.2014 the time acquire to gain property based on acquisitive prescription was fulfilled. Law acquires at least twenty years of possessing and the time before 01.11.1994 is not taken in account. In cases brought in the courts the possession had began prior 01.11.1994, that's why the courts have not accepted the claims stating that one of the conditions was not met. As long as one of the four conditions was unable to be fulfilled the courts have not analyzed the other elements at all. Until today the Albanian High Court has emphasized constantly that “ Given that the acquisitive prescription (without title) was not known before the entry into force of the Civil Code (01/11/1994) this circumstance is sufficient to collapse the search of Abdurrahman plaintiff's claim for property acquisition by prescription

without title to the land of 164 m2. Article 169 of the Civil Code requires a 20-year term possession quite and uninterrupted. Meanwhile, from the date of its entry into force (1994) when the term starts up today, objectively, are not yet completed 20 years ²⁵.

4. Acquisitive prescription in other legislations and its justifications

It is true that acquisitive prescription emerged and developed in Roman law, but it exists as an institute in many other countries nowadays. In common law system countries this institute is known as adverse possession.

French law, Article 2229 C permits the acquisition of title to land by prescription over a 30 year period if there is: "...continuous and uninterrupted, peaceful, public and unequivocal possession, and in the capacity of an owner"²⁶. The Spanish Civil Code recognizes the capacity to acquire ownership by "acquisitive prescription" over everything that can be possessed. Under Article 1941: "Possession must be exercised under claim of ownership, and must be public, peaceful and uninterrupted"²⁷. German Civil Code provides in Article 927 that "The owner of a piece of land may, if for thirty years the land has been in the proprietary possession of another, be excluded from his rights by means of public summons. [...] If the owner has been registered in the land register, the public summons is permissible only if he is dead or has disappeared and no registration in the land register which requires the owner's consent has been made within thirty years"²⁸.

In the United States, all the states recognize this form of gaining ownership with limitation periods ranging from 5-40 years²⁹. In the United Kingdom before the reform of 2002, was provided in section 15 of the Limitation Act 1980 that: "(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person...(6) Part I of Schedule 1 to this Act contains provisions for determining the date of accrual of rights of action to recover land in the cases there mentioned". Anyway these provisions were considered by the national judges as "draconian", "unjust", "illogical" and "disproportionate"³⁰ because it put an individual and excessive burden to the owner, who loses his property and takes nothing as compensation. As a result of the various criticisms, the Land Registration Act 2002 made a number of changes to the law as it related to registered land, and so made it harder to pretend ownerships over a property based on acquisitive prescription.

²⁵ Decision no. 379, dated 29.06.2010 and 12.10.2010 of Civil College of High Court. Decision no. 360, dated 07.07.2011 of Civil College of High Court. The Court has arrived in the same conclusion that objectively was impossible that the limit time condition was fulfilled as long as has not passed twenty years from the date of entering in force of civil code.

²⁶ Report by the British Institute of International and Comparative Law for Her Majesty's Court Service on Adverse Possession, September 2006, p.4.

²⁷ Report by the British Institute, cited above, p.5.

²⁸ Report by the British Institute, cited above, p.9.

²⁹ For more information on other jurisdiction read the Report by the British Institute, cited above.

³⁰ Joint dissenting opinions of judges Rozakis, Bratza, Tsatsa – Nikolovska, Gyulumyan and Sikuta on the Case of J.A. Pye (Oxford) Ltd and J.A Pye (Oxford) Land Ltd v. The United Kingdom, decision of 30 August 2007, paragraph 21.

So from above we can state that acquisitive prescription is known as a way of gaining ownerships in many countries with small differences. Some deems it necessary the existence of good faith and in some others it does not matter. In all the countries it is not provided any form of compensation for someone who loses their proprietary title by acquisitive prescription. Anyway all the legislations finds some justifications in providing this institute as it is a protection against stale claims, it avoids land becoming undeveloped and neglected and prevents hardship in cases of mistake.

In Albania it is true that acquisitive prescription avoids that land remains undeveloped and abandoned. Land is one of the most important factors of producing and is the basis of developing economy. It is stable and it does not get consumed over time. If it is developed it brings lots of income and if we take a look back in history the most desirable thing for a monarch, king or emperor was to conquer land as much as possible, because of the profitable things it brought.

Another reason why we have it in our legislation is that people need to have legal certainty in economic and civil transactions and there is a general need to get the best from the development of property. People should be clarified when they want to enter in civil transactions and not to be confused about the legal situations of a certain land. In our legislation this are the two main justifications why this institute exist.

Another reason why it exists in our legislation is something that happens random with our legislation; it is transposed by other legislations. One of the main reasons why the law exists and should exist is to regulate the social situations and brings peace among people. We need a law that regulates a factual and social situation. In the case of acquisitive prescription, we can state that at the time of the enacted of Civil code there was no tradition in Albania of this institute because it was not known in our tradition and legislation (it was known in the time of King Zog but only in papers, but not in fact). Now because of this law provision, lots of people who possess somebody else's property, and we can state them mostly of them are in bad faith, can become legal owners. It is true that it seems that the owners have abandoned their lands but we have to see the situation in a broader sense. Most of the people who do not develop their land are because of emigration. Somehow these persons they have been forced to emigrate for a better life. In lots of cases they have come back, mostly from Greece because of the situation there, and now they are facing a situation that their lands are used by others, and they have nothing. That's why in the following section we are going to analyze that this institute violates the right to property.

5. Acquisitive prescription and the right to property guaranteed by Albanian Constitution

Article 41 of the Albanian Constitution provides that: "1.The right to private property is guaranteed. 2. Ownership is acquired by gift, succession, purchase, or any other classical way provided by Civil Code. 3. Law can provide expropriation or limitations in the use of property only for public interests. 4. Expropriations or limitations on property that are equaled with expropriation are allowed only after a just compensation. 5. For the disputes for the amount of compensation may make a lawsuit *at the court*".

From this it is clear that in Albania the right of property is guaranteed and this means that no one should interfere or violates the right of the owner to enjoy peacefully his right. This means not only other individuals but government too. The way how it is acquired is different but they are provided in civil code explicitly in order of legitimism and legal security. The right of the owner is not absolute anyway or intangible but because we live in society and not in isolation sometimes it is necessary to interfere in the right of the owner and as a consequence always should be compensation. The fact that it is not absolute is provided in paragraph 3, that “Law can provide expropriation or limitations in the use of property only for public interests”. From this we understand that always the limitation of the property should be made by the law and “*only for public interests*”. So there are two conditions to be fulfilled to conclude that the interferences in someone’s property are according to Constitution. Besides this there is another condition that should be fulfilled cumulatively that is “*only after a just compensation*”. A just compensation is what places the owner in a good position even after he loses his property without his willing, known as restitue in integrum and this makes the difference between a democratic state and a dictatorship state.

To guarantee the right of the property the Albanian parliament has enacted e very important law that is the law no.8561, dated 22.12.1999 “On expropriation or taking in temporary use the private property for public interest”. This law regulates the right of the state to expropriate or to take in temporary use the private property of individuals or legal persons for public interest/use and the defending of the respective owners’ rights and interests. In this law is provided what it means public interest. From this we understand that the parliament has not permitted to leave this situation of interference unregulated and in discretion of state bodies but have provided it explicitly in Article 8. What is of great importance is that in this law is provided just compensation and the principle of “proportionality”. Expropriation and taking in temporary use of the property should be towards a necessary measure in order to fulfill the reason of the expropriation and towards just compensation.

In another law, the law no. 7764, dated 02.11.1993 “On foreign investment” is provided in Article 4 that: “Foreign investments will not be expropriate or becoming state property directly or indirectly, will not be object of any equivalent measure, except in particular cases for public use defined explicitly by law, without discrimination, with immediately compensation, in a proper and effective way in accordance with legal procedures”. Article 5 of the law provides that compensation is equivalent with the real market value of the expropriated investment, done immediately and before the act of expropriation becomes known or taken in consideration. From these two laws we understand that when the right of the property is deprived or limited, it can always be toward compensation.

From time to time the Albanian Constitution Court³¹ who interprete the Constitution and control the constitutionality of law with Constitution, has emphasized that the right of property, as most of the rights enacted in the constitution, is not absolute. Based in the Constitution, Article 41, paragraph 3, for public interest, law can provide expropriations and limitations in using property³². In its jurisprudence, Albanian Constitution Court has pointed out some conditions by

³¹ The decisions of Albanian Constitutional Court are binding and they have the same hierarchy with the Constitution.

³² Decision of Albanian Constitutional Court no. 31, dated 18.06.2010.

which our legislator should be guided when limit or deprive the right of property. In the case no. 30/2005, the Constitutional Court has pointed out that the constitutional criteria of margin of appreciation by which should be guided the legislator in respect of the right to property is: public interest, just compensation, righteousness principle, proportionality and social state principle.

The interpretation of public interest is in the margin of appreciation of the state, taking in consideration political, economical and social interests. Public interest does not mean only that the property is transferred to the state, in order to fulfill a public interest. Constitutional theory has pointed out that even when the property is transferred to a group of individuals it is public interest, because its final purpose is to make social justice within the community.

When the Constitutional Court analyzed the constitutionality of some of the articles of law no.9482, dated 03.04.2006 “On legalization, urbanization and integration of informal *buildings*”, it emphasized that, “*as long as law on legalization’s object is to legalize the buildings that are build without permission and to urbanize places, informal blocks and informal buildings and to integrate them in the territorial and infrastructural development of the country, improving life conditions, exist “public interest” that may justify the expropriation of the owners and transferring their ownership on lands to the persons who have built on them without permission. Constitutional Court assess that the free definition of law on legalization, according to which, the land expropriated should not remain to the state, but be transferred to the owner of the building, doesn’t make an obstacle that this definition should be considered as necessary for public interest*³³. Anyway to be considered constitutional an interference in the right of property it’s not enough only the existence of the good will or general interest but should be a proportionality between the measures taken and the purpose that should be realized with the privation of the right of property. So, the situation requires an equal spread of responsibility over social and financial obligations, which cannot be put only over a particular group, besides how important is the interest of the other group. It is necessary to analyze if the measures taken justify the loss of property of the owner. In a rule of law state it is required that state finds adequate measures to regulate conflictual situations or sensible situations from social point of view.

In another decision, the dissenting judges stated that: “In one hand we have the possessors who are illegal and by the other hand we have the owners. Both subjects are private. The legal position of the latter is much better than to the first. We are facing a situation where the privation of the land are annormal and the general principles of civil law does not apply. Anyway in a conflictual situations, state intervenence as e regulator should not be of that to violates the rights of some in order to legalize the other group. Determinating is the fact to whom *the purpose that is intended serves and is the measure taken legitimate by this purpose*”³⁴.

The situation on legalisation was regulated by compensating the owner of the land partly by the building owner and partly by the state. From the Court jurisprudence we can state that only because in the legalization of buildings case there are a large group of persons the government legalized an illegal situation.

³³ Ibid.

³⁴ Decision of Albanian Constitutional Court no. 35, dated 10.10.2007.

Taking in account what was stated above, in albanian laws and Constitutional Court jurisprudence someone cannot be deprived of his property without compensation. In the case of the owner who lose the land because the possessor gain it with acquisitive prescription, we can state that the law puts the owners in a discriminative situation and violates the owners right to property. For as long as the government resolved the situation of persons that with bad faith had build on the others land and guaranteed the right to compensation, the same should be done with the acquisitive prescription. In these cases the right to compensation is neccessary in order to put not an excessive burden to the owner who loses the ownerships forever. On the other hand the possessor besides he profite for twenty years from a land or property that is not his, he wins the ownership too, at the end.

To our opinion the acquisitive prescription in the part that does not provide just compensation for the former owner is in breach of the Constitution. It puts persons in different position and this breach the equality principle guaranteed by the Albanian Constitution in Article 18³⁵ that all the citizens are equal in front of the law.

6. Acquisitive prescription and Article 1 of Protocol 1 to the ECHR

Article 1 of Protocol No. 1 to the European Convention on Human Rights guarantees the right to property. It provides: *“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

When an individual or legal person pretends that there was a violation of his right to property, the Court analyzes the case based on the above article. **The above article contains three distinct rules:** “the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognizes that the Contracting States are entitled, amongst other things, to control the use of property in *accordance with the general interest ... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule*”³⁶.

After deciding if there is interference on property, the next step is to analyze if that interference is justified by the state. In order to be justified, any interference with the right to property must serve a legitimate objective in the public, or general, interest. Besides serving a legitimate objective it must be proportional too. The jurisprudence of ECHR has stated that factual or legal

³⁵ Article 18 of the Albanian Constitution provides that “ All the persons are equal in front of the law. 2. No one can be discriminated unjustly for reasons as gender, race, religion etc...”.

³⁶ Case of J.A. Pye (Oxford) ltd and J.A Pye (Oxford) Land ltd v. The United Kingdom, decision of 30 August 2007, paragraph 52.

expropriation of property without any reasonable compensation will make the interference disproportional and as a consequence the interference violates article 1. Anyway it does not always mean that it has to be full compensation, sometimes partly compensation is reasonable.³⁷

So the question is whether the acquisitive prescription in the part that does not provides compensation for the former owner is in breach of Article 1 Protocol 1 to the ECHR?

First we have to state that Article 1 of Protocol No. 1 is not restricted only on the interferences of the government but it applies to individuals too, or in situation that law regulates the property of an individual or situation between individuals³⁸.

Acquisitive prescription is provided in Albanian Civil Code as a way of acquiring property with original title. If the owner wants to recover his property and file a claim in the court against the current possessor, he might lose his property not because of the limitation of period but because the possessor has won title based on acquisitive prescription. In Albania the right to recover the property of immovable rights is imprescriptibly³⁹, so the owner has the right to claim the recovery of his property all the time. If he will be successful or not it depends on whether the possessor has fulfilled the conditions to acquire land based on acquisitive prescription. So the reason why the owner loses his title is not to deprive him from his right but to regulate the factual situation with the legal one. A possessor who for twenty years has worked a land, has behaved as the owner, has never been bothered by the owner deserves (in the context of the law) to become the legal owner. He is a factual owner and has been behaving as an owner should behave. Considering this, interference should be considered a control of use of land, under the second paragraph of the provision.

It is clear that there is interference in the right to property, and then it is necessary to analyze if acquisitive prescription pursues a legitimate aim in the general interest. And if there is a general interest the interference with the right of property is proportionate to the aim pursued.

The ECHR in *J.A Pye* case confirmed that there was a legitimate aim in the general interest in the existence of limitation of periods and the extinguishing the title of the former owner. Anyway, the situation in Albania is different. The extinguishing title of the former owner does not come from the fact that the right to recover property should be claimed in a determined time but because someone else has gained it on the basis of a law provision. To our opinion, in Albania exist a traditional society and people know who is the owner of a certain land. It is true that Albania has problems with the registration of lands, and there are today certain zones that have not register the land for the first time, anyway people know how much land they own. We

³⁷ Decision of ECHR, “*Papachelas v. Greece*”, no. 31423/96, dated 25.03.1999.

³⁸ For more read case “*James v. the United Kingdom*” A98 (1986) involving legislation which enabled tenants to acquire ownership of the properties in which they lived from their landlords.

³⁹ Albanian Civil Code did not explicitly provided that the right to recover property was imprescriptibly. It provided in Article 119 that “to recover the item, the limitation of period of the action commenced from the date that the owner knew about the possessor and the violation”. But the laws said nothing about the time limit. This grew a great debate among Albanian scholars, some claiming that the right to recover property is imprescriptibly and the others claiming that the limitation of periods is ten years (general provision). Albanian High Court in United Sessions concluded that the right to recover the property is imprescriptibly, mostly based on the fact that the right to own land is an absolute right, towards everyone. For more read the unified decision no. 5, dated 31.05.2011 of the United Session of Albanian High Court.

are a small country and we don't have a long tradition on land property. We have become an independent state only in 1912, and before the 90s not all the people had private lands. Only in 1991, the legislator in order to regulate the situation of persons who had worked on cooperatives, and had no land at all, enacted law no. 7501 and gave land to the those persons. The amount of the land that was given was to help the families that lived in the villages and had no property at all. The fact that some lands has remained undeveloped because their owners have immigrated, and therefore they don't deserve to have the land any more, is not based. The owner has the right to do what he wants with his property, and if there is a risk that land remains undeveloped, the government can take other measures to make them useful, for example to put large taxes on lands that are not developed, or to help people who cannot afford to work on them.

To our opinion, giving the right to property to the possessor without any just compensation to the owner is to favor twice the possessor, most of who are in bad faith. They profit from the use of land for twenty years and as a trophy they earn the ownership over the used land. And it does not seem to us that exist a legitimate aim at all.

This situation has not been on focus for a long time, but from year 2014 we will see how the situation will develop in Albania and what will be the problems that we will encounter in courts and between individuals. We stated above that legislator resolved the situation of persons who had build on the land of others. We analyzed that taking in account the law and the Constitutional Court decision. In that situation exist a great group of persons that had build without permission and sometimes in the land of others, and might have exist a legitimate interest, but in the situation where a possessor gains the ownership, mostly in bad faith, profiting from the negligence of the owner, and gives nothing to the owner, depriving him forever form his right to property, this breaches Article 1 of Protocol 1 to the ECHR.

Even if we would pretend that exist a general interest, this is not proportional, because depriving someone from his property without any compensation at all, makes an excessive burden for the owner and this should not be permitted in a rule of law state.

Conclusion

The right to property is one of the most important rights of a person guaranteed by the interior legislation and ECHR. It is not absolute and we should not pretend that it should be absolute because we live in a big society and in order to purse general interests sometimes the owners are deprived by their rights. Anyway if a person is deprived from his property he has the right to have just compensation. We are not talking about the situation which happens in extraordinary circumstances, as for example in the time of war, earthquakes or volcano, because in this situation we all give something from ourselves.

In a rule of law state, to our opinion, the acquisition of property based on acquisitive prescription violates the Albanian Constitution and Article 1 of Protocol 1 to the ECHR. In the part that it does not provide just compensation for the former owner it brings an excessive burden to the owner and we are not very sure if we can find a legitimate aim at all. To our opinion the legislator should abrogate article 169 of Albanian Civil Code, but if legislator must make some amendments to the law. So,

1. The legislator should make a difference between lands that are registered and those which are not registered.
2. It should provide just compensation for the former owner, or at least less than full compensation.
3. The owner should be informed before the time expires that he is about to lose its property, and it should be in his hand to file a claim to recover back his property or not.

Anyway, the problems that will rise from the acquisitive prescription will be seen in the future and we will see how the competent institutions will deal with this institute. The aim of this article was to raise some important questions related to acquisitive prescription in Albania and we hope that this makes a useful article to be considered by anyone who wants to know more about the situation in Albania.

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