

ISSN 1127-8579

Pubblicato dal 01/07/2016

All'indirizzo <http://www.diritto.it/docs/38418-ways-of-property-profit-by-civil-code-of-albania>

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WAYS OF PROPERTY PROFIT BY CIVIL CODE OF ALBANIA

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Abstract.

Ownership is a subjective civil right and as all the others subjective civil rights she gained as a result of the conclusion of specific legal facts. With the finding of a certain legal fact, the subject of law, whether natural person or legal entity has the right of ownership over a particular item. These facts, circumstances or reasons recognized by law which result in establishment of the right of ownership, are known as the ways of property profit. Legal cause is named legal title. The title is the legal relationship that exists between the transferor and the winner of the right of ownership, which justifies the acquisition of property if the property has no vices. The title is the legal reason under which is made the transfer of ownership or is proved legitimate possession¹. The transfer of ownership is an institute of the right of ownership and provided by Article 162 of the Civil Code: *"The right of ownership and other rights on items, are transferable, except where prohibited by law or by the nature of the right"*. The transfer of property is related with property profit ways. Ownership is factual and legal power over the property². By way of property profit, we understand the legal facts with which the law relates the establishment of right of ownership. Property is acquired only by means explicitly defined in law or subsidiary legislation and in no other way³.

1. WAYS OF PROPERTY PROFIT

Ownership can be acquired through ways in this code and other means specified by a specific law. Property is acquired in one of these ways: by contract, by inheritance, acquisition in good faith of movable property, acquisition of ownership by prescription, items without owner, the acquisition of ownership by union and mixture, the acquisition of ownership with processing, merging of land by alluvium, lost and found items, treasury, state ownership on a category of movable properties, the acquisition of ownership by conquest, acquisition of ownership through expropriation.

Acquisition of property is divided into two groups:

- *Acquisition of ownership in an original way,*
- *Acquisition of property in a derivative way.*

¹ Civil Law Part II, Valentina Kondili

² Property Law Prof. Dr. Abdulla Aliu, Prishtine 2006, fq. 112-114

³ Civil Law Part II (ownership) Ardian Nuni, Luan Hasneziri, Tirane 2010

Acquisition of property in **an original way** is when the right of ownership over the property is acquired for the first time or obtained independently by the right of the previous owner. Such a result comes when item did not have any previous owner, when the previous owner abandoned it, or when the item has had a previous owner, but his right to the conditions provided by law loses. The right of ownership in this case is obtained from another owner in the original way. In acquiring ownership in an original way is characteristic acquisition of ownership free from any liability that may have previous owner. In the original mode of acquiring property, the ownership situation is realized without previous connection with other entities such as the invention, occupation etc. Acquisition of ownership in an original way, except that brings the suppression of the right of ownership of the owner, extinguishes all real rights and guarantees encumbering the property. Acquisition of ownership in an original way is the acquisition of ownership of the property gains. The owner wins ownership of natural gains produced by the property, except when ownership has been transferred to others. Ownership of the fruits is acquired only after they have been separated from the property, because while they are not separated from the object, are part of it. Also a way to acquire ownership in an original way is the acquisition of ownership over components of the property, since the owner of the property belongs ownership over the component parts of the property and ownership acquirement over fixtures belonging to the main property owner.

Acquisition of property in **derivative way** is then when the ownership over the property acquired from a previous owner or as stated in legal literature with succession of rights. He who transfers the right is named alienating, while he who acquires the ownership of the property is named the winner. According to the doctrine are known other ways of Acquiring ownership, such as that of gaining ownership with universal or special title.

- Acquisition of property by **universal title** is then when all of a person's property passes to another person who occupies the previous owner in all legal relationships, object of which is it.
- Acquiring Ownership by **particular title** is then when to another person who occupies the old owner of the property does not exceed all the property but special items or group of special items.

In the case of acquisition of ownership in these ways, is characteristic is that winner of ownership over the items with universal title is obliged to respond fully or partly for liabilities of the transferor of the property. In acquiring ownership of property with particular title, the ownership winner is not liable for the obligations of the former owner and cannot be required the execution of obligation to creditors, with the exception of mortgage claim.

Also are known other ways of ownership profit without payment and with obligatory title.

- Acquisition of property with **obligatory title** is when the winner of ownership gives a reward or promise a reward item for acquisition of ownership,
- Acquisition of property **without payment** (gift) is the opposite case with the acquisition of property with obligatory title, because its executed without compensation.

Other ways of ownership profit are the ownership profit inter vivos or because of death (mortis causa), where appropriate, whether the property acquisition is made at the time that the Alienator or old owner is alive, or after his death.

The practical importance of the separation of ways of ownership profit is based in the implementation of an old principle of Roman law⁴. The essence of this principle is that no one can transfer to others more rights than he has. In applying this principle is concluded that with derivative way of ownership acquisition, the new owner acquires ownership of the property only if the transfer of ownership is made by legitimate owner of the property. The importance of this division is based in two main directions:

First, to the derivative way of ownership acquisition, above principle is applied that no one can transfer to others more rights than he has.

Secondly, in an original way of ownership acquisition, the owner is liable to prove his legitimate ownership on the property, while to derivative ways of ownership acquisition, owner must prove not only his lawfully property on the property but even for people by who has removed the right of ownership without limitation until pass to an original way of ownership acquisition⁵. Ownership acquisition ways are also ways of ownership loosing. This situation should not be confounded with the situation when are completed the deadlines for specific suits⁶.

2. Original Ways of Ownership Acquisition

Primary or original ways of Ownership acquiring are the ways in which ownership over the property is acquired for the first time or when the ownership over the property is gained without the owner's won⁷. This happens not only when there is no previous owner over the property or when the previous owner has abandoned, but even when the property has a previous owner, and however this right destined to lose against the right of him who wins the ownership with original title⁸. Usually, in these cases it comes to acquiring property right under the law. This means that the law recognizes legal title

⁴ Old Principle of Roman Law "nemo plus juris in alium transferre potest quam ipse habeat".

⁵ Civil Law Part II (Ownership) Ardian Nuni, Luan Hasneziri, Tirane 2010

⁶ unifying decision of the United Chambers of the Supreme Court no. 5, dated 30.05.2011

⁷ Civil Law Part II (Ownership) Ardian Nuni, Luan Hasneziri Tirane 2010

⁸ Private Law, Francesco Galgano, Tirane 2003

as sufficient to the property acquisition⁹. The original method of acquiring the right of ownership means that there is an interruption of the legal continuity between the right of the predecessor and the new owner¹⁰. The right of property acquired in the original way does not depend on the volume of property of ex- owner because the new owner acquires ownership without any cargo which may have been the previous owner. Profit of ownership with original title, in addition to the termination of the right of the previous owner, also extinguishes the rights or real guarantees encumbering the property.

2.1 Ownership acquiring with acquisitive prescription

Article 168 of the Civil Code provides that: A person who has acquired a property in good faith, based on legal action for the transfer of ownership and which is not prohibited by law, become the owner of this property, after continuous possession of five years when the property is movable and ten years when the property is immovable. When possession is not in good faith, the terms of uninterrupted possession duplicated. Possession is considered continuous even when the winner of the property has given possession to another person. Cannot be obtained with a acquisitive prescription a property which is public property". According to Article 169 of the Civil Code "Person who has possessed quietly and continuously, behaving as if he were the owner of an immovable property for twenty years, becomes its owner." By prescription, as discussed, shall extinguished the right to sue. But the prescription, the passage of a certain time, under certain conditions, serves as a case for gaining ownership of an property. Differently from the prescription of a suit, is called acquisitive prescription (usucapio)¹¹.

Acquisitive Prescription (with title or without title) is one of the ways of ownership acquiring, provided for in Articles 168 and 169 of the Civil Code. Basically, the common element of Acquisitive prescription with title and without title is peaceful possession of the property without interruption.

Institute of Acquisitive Prescription has some common characteristics and differences between them. Basically, the common element of Acquisitive prescription with title and without title is peaceful possession and without interruption over the property. For Acquisitive prescription with title (as provided by Article 168 of the Civil Code), in addition to continuous possession for 10 years over the immovable property, required to exist legal action for the transfer of ownership, an action which is not prohibited by law, and the existence of good faith (at the time of performing legal action for the ownership title acquisition).

⁹ Property Law (Ownership) Prof. Dr. Abdulla Aliu, Prishtine 2009

¹⁰ Basics of real right, Gamz. A. Prishtine 1972

¹¹ Civil Law Part II (Ownership) Ardian Nuni, Luan Hasneziri, Tirane 2010

While the acquisition of ownership by prescription with no title has as an essential and sole element the existence of quietly and without interruption possession over the immovable property (under Article 169 of the Civil Code - for 20 years), and behavior during this possession should be the same as if the possessor was the owner of the property¹². For Acquisitive prescription with title (as provided by Article 168 of the Civil Code), in addition to uninterrupted possession for 10 years over the immovable property, is requested that legal action for the transfer of ownership exist, an action that is not prohibited by law, and the existence of good faith (at the time of performing legal action for the ownership title acquisition), so the winner of the property did not know or was not obliged to know that the person from whom he acquired the ownership over the property wasn't the owner or legal action for the ownership transfer was not valid. Legal action must be understood the contracts as mutual legal actions, whether the unilateral or mutual contracts for the transfer of ownership as sale, gift, etc., or testament, as unilateral legal action and any other legal fact which produces ownership profit. Legal action should be highlighted as a legal fact has a wider meaning. Legal action should be understood all legitimate human actions that may result in the acquisition of property. These actions do not bring the desired effects due to invalidity that can be ascertained, but it is not prohibited by law their performance, for example: entering into a contract to purchase a house without respecting the form required by law, etc. The person who wins the property must be in good faith, or at the time he has won the property did not know and was not obliged to know that the act of ownership transfer was not valid or that the person has passed the property was not the owner of the property¹³. Acquisitive prescription with title covers any invalidation, as well as relative and absolute invalidity, because it is a property acquisition by possession and a primary way of acquiring property¹⁴. Interpreting this provision should not only exist these conditions but also exist at the same time. The absence of even one of these conditions does not precede acquisition of ownership by acquisitive prescription. Regarding the fact that the owner be aware that the property right belongs to others is important in relation to the necessary time of possession for acquisitive prescription, which is short for possession in good faith, for 10 years.

For acquisitive prescription with title, in addition to an uninterrupted possession of 10 years of the immovable property, is requested that legal action exist, which have the purpose of transfer of ownership, and this action is not prohibited by law¹⁵.

While the acquisition of ownership by acquisitive prescription without a title, institute provided by article 169 of the Civil Code, has as essential and sole element the

¹² Decision nr. 54, dated 20.02.2014 of Civil Chamber of the Civil Code

¹³ Civil Law Part II Valentina Kondili

¹⁴ Decision no. 4 of Constitutional Court 23.02.2016

¹⁵ Decision no. 258, dated 11.04.2013 of Civil Chamber of Supreme Court

existence of quietly possession and without interruption over the immovable property for 20 years. Naturally, behavior during this possession should be the same as the possessor was the owner over the property. If the conditions set out in these provisions are fulfilled, the previous owner of the property loses its right of ownership over the property, because acquisitive prescription under the conditions specified in the law could lead to establishment or acquisition of the property right¹⁶.

2.1.1 The difference between acquisitive prescription and extinguishing prescription

The property right cannot miss from disuse, even if the owner not to have used his item or property for a long time. The owner does not lose the right to exercise a lawsuit for restoration until the defendant has not acquired ownership by acquisitive prescription. This situation should not be confounded with the situation when it met the extinguishing prescription deadline for specific suits. Acquisitive Prescription (with title or without title) is one of the ways of ownership acquiring, provided in Articles 168 and 169 of the Civil Code. If the conditions set out in these provisions have been meet, the lawsuit for restoration will collapse, **not because of extinguishing prescription, but because such way of ownership acquisition represents legal reason that the previous owner of the property loses its right of ownership over the property.** Even when a person does not use the property for a period of over 20 years and ownership over this property passes to a person due to fulfillment of the conditions described in Article 169 of the Civil Code, the first person has lost his ownership over the property not because of extinguishing prescription, or due to non-use of the property over 20 years, but because ownership of this property is gained by another person by acquisitive prescription.

- (i) the right of ownership is an absolute right, without limitation in time and exercised by the holder at any time. To accept that the right of ownership lost by extinguishing prescription means to wear time limits to the exercise of this rights and restrict the right of the owner with time limits, regardless of the period, It brings not extinguish the right of ownership.*
- (ii) The right of ownership is a right stable and continuous character, which means that it exists at all times and not to the enjoyment of the property by the owner do not exercise this right for a specified period by the owner, despite period, it brings not extinguish the right of ownership.*
- (iii) An estimable argument that ownership is not terminated by extinguished prescription is the difference between this institute as a legal fact of the*

¹⁶ Decision no. 4 of Constitutional Court 23.02.2016

events category, which brings the loss of the right to sue and acquisitive prescription as a way of property acquisition. Acquiring Prescription under the conditions specified in the law could bring the acquisition of the right of ownership, and extinguishing prescription for no time and for no reason can not entail the loss of the right of ownership because it is closely related (in the field of civil law) with the loss of the right to sue and not with the loss of the property right (the subjective right)¹⁷. The same legal position is held and the Civil Code in force. Real rights over the property of another may lose with extinguishing prescription.¹⁸

Acquisitive Prescription is based on possession of the property and consequently is an original way of property acquiring. A person who has acquired an immovable property by prescription has the right to file a lawsuit against the former or his heirs for recognition of their ownership right and under the court decision concerned has the right to register the property in its ownership in relevant records of Immovable Property Registration Office. The court's decision in this case has a cognitive, confirming character.

The person who possess smoothly and without interruption a property, behaving as if he were the owner for twenty years of an immovable property, becomes its owner. In Article 169 of the Civil Code, provides the acquisition of ownership over an immovable property, launched just by owning the property, when in fact the person behaves as if he were the owner, therefore possession is a property right. Upon the expiration of the duration of twenty years it becomes its owner. Registration of the property acquired by prescription shall be made under conditions described by Article 170 of the Civil Code.

Provisions for suspension and termination of the lawsuit prescription applies to the Acquisitive prescription. Acquisitive Prescription is interrupted by loss of possession, but possession is not considered interrupted when the owner comes back to possession within six months or later, by a lawsuit filed within six months. Implementation of Acquisitive prescription institute brings guarantee in civil legal relations and consequently in civil circulation, because an factual accepting situation finds legal regulation.

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