

ACQUISITION OF THE PROPERTY RIGHT: AN OVERVIEW OF PRESCRIPTION METHOD ANALYSIS

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Abstract

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Ownership acquisition has been one of the biggest problems to deal with within Kosovan society since the early times, especially in the post-war period. Not to mention that people were killed by each other on this topic. Laws and canons in years have tried to bring solutions to these cases. Some of the manias considered in these canons and laws were possible through exchanges, usurpation, and inheritances by which the ownership (Merriam-Webster, n.d.) was gained in generations. Therefore, knowing all of this, this paper aims to bring information on how the property was and continues to be acquired in Kosovo and the problems people have to deal with during this process. To reach our aims we used these methods: research method, historical and descriptive methods. The main findings of this paper identified and explained the challenges of ownership acquisition by good faith and clarified when one can be the owner of an immovable property. The relevance of this paper stands on the information given about this topic to the readers and also on the new research studies that will be done in the future.

Keywords: Prescription, Immovable Property, Possession, Owner, Bona Fide

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1. INTRODUCTION

Ownership is the right over a certain thing. Historically ownership exists or it is as ancient as humanity itself. People have always owned things and properties claiming that they are the owners of that property by putting *de facto* power over that property and then considering themselves the owners of that property. Ownership since ancient times has been acquired in various ways, in addition to usurpations, it has also been acquired in other ways. Acquisition of property has been made through different sales, but these sales have been made according to the canons in the ranks of the kinship of a blood relative, where the land must first be sold to siblings and then if not sold to them, it could be sold to cousins and other people. The sale took place only through witnesses and the so-called “verbal contracts” (Woerner, 2022), through which

they also became the owners of that property. Ownership is a very important legal institute of civil law and in particular property law, it is treated not only as a right over the property but also as a property legal relationship.

In the Republic of Kosovo, ownership is considered a fundamental right over a certain thing, by which the owner has the right to dispose of that thing according to their desire, especially to possess it and use it. A proprietary possessor acquires ownership of an immovable property, or a part thereof, after twenty years of uninterrupted possession (Assembly of the Republic of Kosovo, 2009).

The ways of acquiring the right of ownership in the Republic of Kosovo, although Law No. 03/L-154 on property and other property rights of the Republic of Kosovo (Assembly of the Republic of Kosovo, 2009) does not define them correctly, there are two ways of acquiring the right of ownership:

the derivative and the original way of the right of ownership. The derivative acquisition of the property right derives from a predecessor, i.e., from a subject before us, i.e., from the old holder is transferred to the new holder, while the original way of gaining ownership differs from the derivative because the right is not derived from our predecessor, but it is acquired through the legal title or otherwise, it is said as the acquisition of ownership according to the law (*ex-lege*), whereas titles are: profit by prescription, mixing of an item, union, finding the thing, finding the treasure, etc. Prescription is the acquisition of an easement, over the property of another, through adverse use of that property ("Prescription", n.d.). So, the aim of this paper is to explain and in-depth describe all the processes and things stated above, such as describing the prescription in Kosovo, discussing the challenges of this process, describing the history of the right to acquire property by prescription, discussing the "good faith", etc. When it comes to this topic and the literature gaps, in Kosovo there are specific laws that arrange the main topic of this paper, so in general, there are no important gaps in this topic. The relevance of this paper stands on the information given about this topic to the readers and also on the new research that will be done in the future. The research methodology of this paper is a research method, historical and descriptive methods. The main findings of this paper identified and explained the challenges of ownership acquisition by good faith and clarified when one can be the owner of an immovable property.

Based on the importance of all the above-mentioned information, in this paper, we are going to describe and give information about the acquisition of property by prescription, by describing the methods of this process in the Republic of Kosovo. Also in this paper, we are going to describe the history of the right to acquire property, another element that is going to be discussed is "good faith", its meaning, and the method itself. The conditions of ownership gained through winning prescription will be discussed and we will also mention all the laws and rules that regulate property acquisition.

The rest of the paper is structured as follows. Section 2 reviews the relevant literature. Section 3 provides the research methodology. Section 4 discusses the whole topic and the research. Section 5 concludes the paper.

2. LITERATURE REVIEW

There were many studies about ownership and also about the acquisition of property by prescription, yet there is always the need to bring something new to this topic. The literature used in this paper was used to describe definitions of ownership, property, and other notions mentioned in it. Also, it was used to make a comparison in years about this topic, its evolution, and also the changes during the time, such as in the legislation part. This is why this paper contains legislations from different countries just to make a comparison and in-depth understanding of how this process was regulated in each of these countries. Also to have a better view of the topic we used as sources the legislation of inheritance in the Republic of Kosovo and also the law on property and other real rights. Puhan (1968), said that: "In order for the property over certain things not to

remain long or almost unsafe, Roman Law provided the prescription (*usucapio*) as a way of gaining property by those who exercised power over the thing that was not their property, if they met the conditions that were provided through legal provisions" (p. 9). Also, based on the laws used as sources in the law of property and other real rights it is said: "If the property is acquired by winning prescription, the rights of third parties, which were created before the acquisition of the property, are extinguished, unless the possessing owner is in good faith regarding these rights during the acquisition of the property possession"(Assembly of the Republic of Kosovo, 2009, p. 13). Then Shehu (2000) in his book said: "In order for a real right to exist, the object must also exist because if the object of the right does not exist, the right itself cannot exist either. The object of property law are only the items" (p. 14). In addition, Powell et al. (n.d.) said: "The concept of prescription goes back to the early Roman Empire, when a need arose for a system whereby provincial land, not held by civil title or acquired by *usucapio* (continuous possession over a period of two years), could still be "owned" after possession over a longer period of time, ranging from 10 to 20 years" (p. 9). Based on a summary of the Supreme Court about the property contests, it is said: "In order to acquire ownership, according to this method of acquisition, must be met the following conditions: the object must be immovable; possession of the item in good faith; and pass the time set by law" (Sylejmani et al., 2019, pp. 12-13). As for our opinion, we come to the idea that we have used strong resources during this research, such as laws from different countries and legislation, civil codes, journals, other papers about this topic, books, and other sources. Which elements make this paper more valuable and enrich with information? Also, Mahdy (2022) said: "Acquisition of ownership by prescription is one of the legal reasons for transferring property ownership, due to the expiry of a right that the owner was entitled to, but did not exercise (in whole or in part). According to the principles of "acquisition by prescription" an individual may have the ownership rights, as soon as he physically possesses a given property for a minimum period of fifteen years, coupled with the intention of ownership for his own account, and not in favor of others. Another opinion on good faith is mentioned by Rozenfelds (2020), "Acquisition in good faith is a momentous fact. A person has either acquired the property in good faith or otherwise" (p. 11). Based on the study by Danova (2023), it is said that: "Prescription is governed by the legal certainty, especially in the case of derivative acquisition of property rights, whereby, if the grantor is not the owner or the legal basis suffers from vices, the transferee will not become the owner will live in eternal fear that anyone can attack the right of his predecessor. So if a person cannot become the owner by a legal transaction and custody rights owner in a given period, it is useful to create a new basis for another acquisition of such rights" (p. 12).

3. RESEARCH METHODOLOGY

For this research, we have used the research method of cases. This method was used to bring more information to this topic by studying cases about this topic. Also based on them, it brings facts and describes the whole process of the topic. The method

of historical research was also used in this paper. We analyzed cases from earlier times just to compare and also tell that problems that are mentioned exist from earlier times. We described how they were solved and also between whom they were created. And the last one was the descriptive method. We thought that these three methods would be the best methods to do the research on this topic with the intention to bring the information that was unclear and also to bring answers about the ownership and other important elements to this topic, as was mentioned in the Introduction section.

4. RESULTS AND DISCUSSION

4.1. The right to acquire the property: Historic aspect

Through this paper, we analyzed the acquisition of property right. We made clear the whole process of this topic in Kosovo. We made a comparison between the acquisition right and the winning of the property by prescription in Kosovo in earlier times and now. We also identified the main challenges of ownership acquisition by good faith. We clarified when a person can be the owner of an immovable property by giving examples.

Acquisition of ownership by prescription is one of the legal reasons for transferring property ownership, due to the expiry of a right that the owner was entitled to, but did not exercise (in whole or in part). According to the principles of acquisition by prescription, an individual may have ownership rights as soon as he/she physically possesses a given property for a minimum period of fifteen years, coupled with the intention of ownership for his/her own account, and not in favor of others (Mahdy, 2022). In order for the property over certain things not to remain long or almost unsafe, Roman law provided the prescription (*usucapio*) as a way of gaining property by those who exercised power over the thing that was not their property, if they met the conditions that were provided through legal provisions (Puhan, 1968, p. 236). The concept of prescription goes back to the early Roman Empire, when a need arose for a system whereby provincial land, not held by civil title or acquired by *usucapio* (continuous possession over a period of two years), could still be "owned" after possession over a longer period of time, ranging from 10 to 20 years (Powell, n.d.).

Conditions for acquiring property with permanent possession for one year or two years were as follows. In movables, the acquisition of ownership is done in terms of one year with uninterrupted possession, while in immovable in terms of two years, as the winning prescription is determined with sources of Roman law (Puhan, 1968, p. 236). Based on Roman law, *usucapi* is a way of gaining ownership through possession for a certain period provided by law (Borkowski & du Plessis, 2000, p. 270).

Usucapio (holding in use) is the acquisition of ownership by prescription — a person became the owner of the property by holding it for a specified period of time. Those who benefited from the *usucapios* were mainly those who had acquired the property innocently, but who lacked dominance over it due to any flaws in their title.

Usucapio gives the holder the title. The origin of *usucapios* can be traced back at least to the law of 12 tables, which provided that land could be taken after two years of use, while for other movable items, one year was sufficient to use. The principles of *usucapios* were gradually developed and it also contained its elements or conditions in such a way that for *usucapi* to exist the condition of property possession, fulfillment of time, trust, as well as suitable property to be the object of *usucapios* must be met (Borkowski & du Plessis, 2000, p. 271). According to the law of 12 tables, any individual who used the land for two uninterrupted years, while other items for one year, was considered the owner of the land or items regardless of how it came to his/her possession and this way of earning was called *usucapio* which means gaining ownership due to use (Bilalli & Bahtiri, 2015, p. 300). The law of the 12 tables was a law that was applied to the Roman people, therefore even this provision regulating the acquisition of property according to this law applied only to the Roman people.

Prescription is a method by which, over time and under certain conditions, a person acquires a right or is released from an obligation (Borkowski & du Plessis, 2000, p. 271). Prescription is the loss of the legal possibility for the fulfillment of the obligation to be requested through the lawsuit, after the expiration of the term which is determined by law (Dauti, 2008, p. 283). So the creditor after the prescription period has passed cannot claim his/her right. This suggests that even the owner of a certain property if he/she did not claim his/her thing from a non-owner possessor, over time as provided by Law No. 03/L-154 on property and other property rights of the Republic of Kosovo, may lose his/her ownership right, this right may pass to the new owner through prescription (Assembly of the Republic of Kosovo, 2009, Articles 40 and 41). The difference between prescription and *usucapio* is that by prescription the right is lost, the possibility of exercising a certain right by means of violence, while through *usucapis* ownership is originally acquired and their common denominator is that it needs expiration of fixed time (Dauti, 2008, p. 288). The main fact for proving the prescription is time, because after the expiration of the time the request is lost, and another important thing about a prescription is to verify the time when it begins to flow (Dauti, 2013, p. 297).

In property law, the winning prescription or otherwise called *usucapio* is a legal title for the acquisition of property rights in an original way. The winning prescription is a legal title for gaining the right of ownership by keeping the thing in possession for a certain time, so the possessor of the thing in good faith becomes the owner of the thing after the time set by law has passed (Aliu, 2014, p. 167). The winning prescription is of great importance because the largest number of citizens who have put the *de facto* power over the thing and the most trustworthy but have not registered his/her right, respectively in the past have not issued a cap on it. This legal institute, due to the lack of formal contracts for the sale and purchase of the real estate will help the possessors in good faith to become owners (*ex-lege*) based on the winning prescription, according to the law (Aliu, 2014, p. 167).

In property acquisition through the prescription, the factual power (possession) over time is transformed into legal power and this way harmonizes the factual, economic, and legal situation (Aliu, 2014). Acquisition in good faith is a momentous fact. A person has either acquired a property in good faith or otherwise (Rozenfelds, 2020).

Under Swiss law, when a person has owned immovable property and is not registered in the register, without interruption and without challenge, and had behaved as if it was his/her property, then the possessor had the right to be registered as the owner (Federal Assembly of the Swiss Confederation, 1907, Article 662). The same right is applied in the same conditions of a person who owns an immovable property, the owner of which is not clear in the cadastral list or who was declared dead or presumed dead at the beginning of the 30 years of prescription. This type of registration may be made only by order of the court, after passing publicly known for the comments provided that these have not been decided or those announced have been determined (Federal Assembly of the Swiss Confederation, 1907, Article 662).

According to the law in the Republic of Albania, a person who has acquired an item in good faith, based on a legal action for the transfer of ownership and which is not prohibited by law, becomes the owner of this item, after an uninterrupted possession of 5 years when the item is movable and of 10 years when the item is immovable. When the possession is not in good faith, the terms of uninterrupted possession are doubled. Possession is considered uninterrupted even when the winner of the item/property has given possession to another person, where an item that is inalienable public property cannot be acquired by prescription (Law no. 7850 on the Civil Code of the Republic of Albania, 1994). In the positive right in the Republic of Kosovo, a person who is in factual possession of a certain movable or immovable thing can return this factual possession to legal possession, through the institute of winning prescription. In order to become the owner of a certain item through the winning prescription, certain conditions must be met: possession of the thing, the time of possession must pass, and the possession must be in good faith. For movables, the *de facto* possessor can also become a legal possessor after 10 years in custody, while for those immovable — after 20 years in custody, in good faith. We also can say that prescription is governed by legal certainty, especially in the case of derivative acquisition of property rights, whereby, if the grantor is not the owner or the legal basis suffers from vices, the transferee will not become the owner will live in eternal fear that anyone can attack the right of his predecessor. So if a person can not become the owner by a legal transaction and custody rights owner in a given period, it is useful to create a new basis for another acquisition of such rights (Danova, n.d.).

4.2. Acquisition of ownership by winning prescription in the Republic of Kosovo

As in many other countries as well as in the Republic of Kosovo, the acquisition of ownership is gained in different ways, and one of the ways of gaining ownership is the winning prescription, which is part of the original way of gaining ownership. This

method of gaining ownership is not new in the state since it is already known by the legislation. According to the law in the Republic of Kosovo, the winning prescription is also an appropriate way to gain ownership, as there are many cases that meet the conditions provided by the law on property and other real rights, whoever claims that right to acquire ownership belongs to them by having the property in custody, has custody to be in good faith, as well as to pass the legal term of retention, has the right to initiate the procedure to claim this right in court. In order to acquire ownership, according to this method of acquisition, the following conditions must be met: 1) the object must be immovable; 2) possession of the item in good faith; 3) pass the time set by law (Sylejmani et al., 2019).

4.3. Acquisition of ownership by winning prescription according to the law on property and other real rights

The law on property and other real rights entered into force in 2009 and this way all those laws that were in force earlier by which this way of gaining ownership has been regulated have been repealed.

In Kosovo, to acquire ownership through a winning prescription according to Law No. 03/L-154 on property and other property rights of the Republic of Kosovo, a person who possesses a movable item for 10 uninterrupted years acquires ownership of that item upon the expiration of a period of 10 years, i.e., through the winning prescription, if from the beginning and during the 10 years, he/she was not worthy, i.e., he/she was not in good faith, then he/she cannot gain ownership over that item through the winning prescription. The prescription is excluded if the person during the acquisition and duration of property possession has not been in good faith, or during 10 years realizes that he/she does not have the right of ownership over that movable property. If the property is acquired by winning prescription, the rights of third parties, which were created before the acquisition of the property are extinguished unless the possessing owner is in good faith regarding these rights during the acquisition of the property possession (Assembly of the Republic of Kosovo, 2009, Article 28.1, para. 2, para. 3, p. 6).

Acquisition of immovable property through the winning prescription according to Law No. 03/L-154 on property and other property rights of the Republic of Kosovo is as follows. A person who has the immovable property under his/her possession without any interruption and in good faith for 20 years or a part of it, he/she acquires ownership over it. A person who has the immovable property in uninterrupted possession for 10 years and is registered as a possessor in the immovable property register in the cadaster acquires ownership of the immovable property or any part of it if within this period no objection has been registered regarding registration of possession (Assembly of the Republic of Kosovo, 2009, Article 40.1, para. 2, p. 9). A person who without acquiring the right of ownership is registered in the register of rights for the immovable property as the owner of immovable property or other property rights will become the owner, if the registration has remained for 20 years and he/she at this time has owned the immovable property, the expiration of the term

is excluded, if an objection to the registration in the register of immovable property rights is registered (Assembly of the Republic of Kosovo, 2009, Article 41, p. 9).

From what we quoted above, it implies that for the acquisition of ownership through the winning prescription, certain conditions must be met, such as the item/property must exist, the possession of the thing must be in good faith, and the time set by law must pass.

4.4. The item as an object of property right

In order for a real right to exist, the object must also exist, because if the object of the right does not exist, the right itself cannot exist either. The object of property law is only the items (Shehu, 2000, p. 5). Some authors with different views regarding the item emphasize that, although an item is a material value, which brings economic benefits, items are also some other rights such as name rights, copyright, etc. (Shehu, 2000, p. 5). Items in the legal sense can be not only solids but also liquids, and gases, provided that they are put under human power and used by them to bring economic benefits to themselves. An item can also be electricity as well as other energies which are used by man (Shehu, 2000).

The object of property rights is items; which items are in legal circulation. In every legal system, there are items that cannot be in legal circulation and then these will not be treated as items in the legal-civil sense. Therefore, it can be freely said that for the item to be treated, it must be the object of ownership, respectively of any property right, and for an object to be the object of property rights, it must be in legal circulation. Items that cannot be in legal circulation, are considered general goods and these cannot be subject to property rights such as free air in the atmosphere, open sea, rivers, etc. (Aliu, 2014, p. 43).

So, for an item to be the object of property rights, it must be a bodily or liquid item, which is placed under human power and brings economic benefits, as well as which is in legal circulation, which means that the item may pass from one subjective right to another subjective right, i.e., to be able to pass from one subject to another.

4.5. Possession as a condition for gaining ownership through winning prescription

Possession is the actual power over a certain thing. According to Roman law, possession has nothing to do with ownership, property is a right, while possession is a fact (Bilalli & Bahtiri, 2015, p. 268). Possession is defined as factual (physical) power over the thing, which appears through an action (activity) that corresponds to the exercise of the right of ownership, or other real rights (Bilalli & Bahtiri, 2015, p. 268). Possession is normally encountered by the owner, who is also the possessor of the item, but this does not mean that the owner is not separate from the possessor of the item, where one subject has the owner another subject may have the possessor (Bilalli & Bahtiri, 2015, p. 269). Possession as a legal institute represents a factual situation protected by positive (applicable) law (Aliu, 2004, p. 51). Possession is not considered a real right, but only factual power over a certain thing.

Possession is not recorded in public books although it has legal protection because possession is not considered a property right (Aliu, 2014, p. 59).

By possession, we mean the *de facto* power over the thing, i.e., over the object of the right, unlike the property right which has the legal power over the object of the property right, but can also have the *de facto* power over it, while the possession has only the *de facto* power over the thing. Law No. 03/L-154 on property and other property rights of the Republic of Kosovo provides only items as the object of possession, but not the right to be an object of possession (Assembly of the Republic of Kosovo, 2009, Article 11). The object of the right of possession is the items in legal circulation, the movable and immovable items, i.e., the items which are the object of ownership can also be the object of possession.

Possession is important in property law because ownership can be acquired through possession. Possession in good faith is especially important in property law because it is a legal fact that has an impact on the acquisition of the right of ownership through winning prescription, Law No. 03/L-154 on property and other property rights regulates them with the provisions of Articles 40 and 41. Possession as a legal fact in the case of acquisition of ownership can be proven through legal work as a contract, through inheritance as well as through witnesses. Due to its importance, possession has become one of the conditions for gaining ownership through winning prescription, in which possession must be uninterrupted and in good faith as provided by Articles 40 and 41 of Law No. 03/L-154 on property and other property rights, (Assembly of the Republic of Kosovo, 2009).

4.6. Good faith as a condition for acquiring property rights through winning prescription

Good faith (*bona fide*) is another condition that must be met to gain ownership through a winning prescription. Good faith in common law has been stronger and more reliable because as we know from our past at the time when matters were regulated through canons, one of the important issues was the "faith given" or even "the promise" and these have been enough to prove the trust. In Roman law, *bona fide* means that the possessor of the thing believed that his/her possession was held honestly (Borkowski & du Plessis, 2000, p. 273). Law No. 03/L-154 on property and other property rights of the Republic of Kosovo, in its provisions, contains that in order to acquire ownership through the winning prescription, in addition to the uninterrupted possession of the thing, as a condition, it must be the good faith of the possession (Assembly of the Republic of Kosovo, 2009, Articles 40 and 41). Good faith as a condition for gaining the right of ownership is related to the object of ownership, as well as to the object of possession, because the subject of the right seeks the right of ownership using the winning prescription, in good faith in the object of the property right.

By good faith we mean that the possessor of the item, with the thing he/she possesses, that is the object of ownership and possession, behaves as if he/she was the owner of that object of right (item) and neither knew nor could not know that that thing is not his/her. Trust as a condition is a challenge

how to prove, but trust is only assumed. Trust since it is related by the object of ownership and possession can be proven the same as possession, with a contract, even oral, by a banking transaction, by witnesses, etc., therefore its connection with possession is also called possession in good faith. As a condition, it is of great importance in gaining the right of ownership through the winning prescription, because it is also defined by the legal provisions of Article 40 Law No. 03/L-154 on property and other property rights of the Republic of Kosovo (Assembly of the Republic of Kosovo, 2009).

4.7. The passage of retention time as a condition for acquiring ownership through the winning prescription

As the conditions mentioned above, possession and good faith, are important conditions for gaining the right of ownership through winning prescription, also the passage of time of holding the object of ownership is quite important to gain ownership through winning prescription in addition to the condition that possession and trust must necessarily also pass the retention time. According to Law No. 03/L-154 on property and other property rights of the Republic of Kosovo, it is quoted that “a person who has been in uninterrupted possession of an immovable property for 20 years, or a part of it acquires ownership in it” (Assembly of the Republic of Kosovo, 2009, Article 40.1, para. 2, p. 9). As well as Article 28.1 of Law no. 03/L-154 on property and other real rights (Assembly of the Republic of Kosovo, 2009) states that “a person who has in property possession of a movable item for 10 years, without interruption of possession acquires the right of ownership over this item at the end of the period of 10 days, if at the beginning and for a period of 10 years he was not aware that he did not have the right to the property”. The time of holding the object of property right in possession can be proved the same as that of possession because it is about the time of keeping the object of property in possession which is in possession of the subject of right, time begins to flow from the moment the subject of the right takes possession of the thing. Possession, good faith, as well as the time of holding, are the most important conditions for gaining the right of ownership, as provided by the legal provisions of positive law in our country, Law No. 03/L-154 on property and other property rights of the Republic of Kosovo (Assembly of the Republic of Kosovo, 2009).

4.8. Ways of acquiring immovable property by winning prescription

From the researched literature we have found that there must be several ways of acquiring immovable property through winning prescription, where the most common way to acquire ownership is acquiring immovable property with a winning prescription based on legal work such as (a contract), as well as through legal work such as (inheritance), in good faith, and many other titles. According to the Law on Legal Property Relations of 1980, Article 29 stipulates that on a thing that is socially owned, the right of ownership cannot be acquired by winning prescription (Sylejmani et al., 2019, p. 27).

4.9. Ways of acquiring immovable property through winning prescription based on a legal work by contract

The contract is the main and most important source of rights and obligations and the contract is an agreement of two or more people who intend to establish, change or terminate a legal-civil relationship. The contract is a mutual legal work whereby a new obligation is created or an obligation is extinguished (Dauti, 2013, p. 48). The contract is concluded when the parties have agreed on all the essential elements of the contract (Assembly of the Republic of Kosovo, 2012, Article 15, p. 3). So from this, it is seen that through legal work such as the contract can also be acquired the right of ownership such as a contract for the sale of immovable property. The object of the contract of sale is the transfer of ownership of an item or the transfer of a right against the payment of a price (Meho, 2009, p. 35). The purpose of concluding a contract of sale is the transfer of an item or a real right, from one person to another. The object of the real estate contract is the immovable property (agricultural land, land, pasture, residential house, an industrial building, etc.) or any real right over this item (the right of pre-emption or that of compensation) (Meho, 2009, p. 35). According to Law No. 03/L-154 on property and other property rights of the Republic of Kosovo, the transfer of immovable property requires valid legal work between the alienator and the winner as a legal basis and the registration of the change of ownership in the register of rights in immovable property, the contract for the transfer of immovable property must be concluded in writing in the presence of both parties in a competent office (Assembly of the Republic of Kosovo, 2009, Article 36.1, para. 2, p. 8). The competent body for concluding a real estate contract in our country is the notary, this is determined by the legal provisions of the law on notaries in the Republic of Kosovo (Assembly of the Republic of Kosovo, 2018b, Article 3, p. 2). The contract for the sale and purchase of the immovable property must be in written form, as well as signed by both parties, the form of an immovable property contract is also found in the practice of a contractual right (Dauti, 2016, p. 24).

So far we have seen how through the contract of sale, it is achieved to transfer the right of ownership from one entity to another, creating it in front of the competent body. However, the contract of sale to acquire the property by winning prescription comes into expression only when the contracting parties have not certified that contract before the competent body, for certain reasons, and from the moment of its conclusion orally, the seller has passed the item to the buyer in possession, while the buyer has paid the equivalent of the item (price). This type of contract is based on and regulated by the legal provisions of Law on obligational relationships of 1978 which, has been used in a certain case and explicitly in Article 73 states “Contracts for the conclusion of which a written form is required are called final, since it is not related in this form, if the contracting parties have implemented in full or in the dominant part, the obligations arising from it, unless from the purpose for which the form is provided it is

clear that something else turns out” (Judgment C.No.295/2017, p.4). In order to take as a basis the contract of sale as a legal title for the acquisition of ownership by winning prescription, it must be legalized, and from the moment of its conclusion the buyer must take possession of the purchased item, and this can be also sufficient evidence to prove possession, good faith and retention time, i.e., the three essential conditions to acquire the right of ownership by winning prescription, through a legal work (contract).

4.10. Acquisition of immovable property through winning prescription based on inheritance

The right of ownership can be transferred from one subject to another, through legal work such as a contract. This transfer of ownership through a legal work contract can be done between the living parties, and before the competent body, because that is what the legislation regulates in force in the Republic of Kosovo. It does not mean that the ownership is acquired only between living entities, the ownership can be transferred even after the death of the owner entity (testator), to his living successor this transfer of ownership is done through inheritance. The deceased natural person (testator) is inherited by the one who has acquired the inheritance right (heir) (Assembly of the Republic of Kosovo, 2006, Article 5, p.3). The right of inheritance has the people close to the degree of inheritance, as provided by this law.

Inheritance as a way of gaining ownership by winning prescription comes into expression when the testator has possessed a certain immovable property, i.e., has never been the legal owner of that immovable property, and has not registered that immovable property in the cadastral register of real estate. The immovable property which the testator possessed may have been divided among his/her heirs according to the provisions of Article 58 of Law no. 2004/26 on the inheritance of the Republic of Kosovo, it is quoted that “the ancestor, through legal action, can file and distribute his property to his descendants” (Assembly of the Republic of Kosovo, 2006). This assignment has never been certified by the heirs in court to gain ownership, because such a thing is not possible, as the assignor is not the legal owner of the immovable property.

It is assumed that the heirs do not have the real estate registered in the cadastral registers, because their testator was not the legal owner of the real estate either. The best way to obtain the right of ownership in the real estate ceded by the testator, or inherited from the testator is to file a lawsuit to prove ownership through the winning prescription (retention in good faith). The heir becomes a trustee from the moment of opening the inheritance, and in case the testator was a trustee, and the heir does not know or could not know this, the winning statute of limitations starts from the moment of opening the inheritance (Law on Basic Property Relations, 1980).

From the above, we conclude that just as the contract can be proof of gaining ownership through the winning prescription, so an inheritance can be important proof in court proceedings. The way of gaining ownership through the winning prescription with the inheritance as proof in the procedure can be proved by the fact that

the heirs meet the three conditions provided by Law No. 03/L-154 on property and other property rights of the Republic of Kosovo, such as possession, trust, retention time, as necessary conditions for gaining of ownership through winning prescription.

4.11. Acquisition of ownership through prescription on socially owned property

Social property is a good that is in the general interest and is not in legal circulation, as long as it is not in legal circulation, then the individual cannot be its owner, because it is used in the general interest. The object of state property can be the energy and thousands industry, oil, gas, post, etc. (Shehu, 2000, p.45). Objects of public property are also roads, rivers, squares, and parks which are in general use, therefore the object of ownership makes a public property more special because the object of social or public property is used by all and for this reason individual ownership in it cannot be acquired. It is therefore difficult to say that through the winning prescription, you have acquired the right of ownership in social items because they use them all, and in the long run, the fact that they know that they do not belong to any individual in your ownership, but are in social ownership.

The Law on Basic Property Relations in its provisions states “on socially owned items, the right of ownership cannot be acquired by prescription” (Law on Basic Property Relations, 1980, Article 29). However, later in 1996, the law deleted this legal provision, Article 29, which prohibited the acquisition of ownership of socially-owned property, through the winning prescription (Aliu, 2014, p.170). Law No. 03/L-154 on property and other property rights of the Republic of Kosovo does not contain any provision for the regulation of this issue, it does not mention anywhere the way of gaining ownership with winning prescription on a socially-owned property, but it regulated the way of gaining ownership with winning statute of limitations, without mentioning public property (Assembly of the Republic of Kosovo, 2009, Articles 40 and 41). Here it can be said that it is a legal gap, the fact that many cases initiate cases in court proceedings seeking the right to acquire ownership of a socially-owned property through winning prescription, as well as based on the legal provisions of Law No. 03/L-154 on property and other property rights of the Republic of Kosovo, on the grounds that this law did not deny this right (Assembly of the Republic of Kosovo, 2009).

The Supreme Court of the Republic of Kosovo is the highest judicial authority in the Republic of Kosovo (Assembly of the Republic of Kosovo, 2018a, Article 25.1, p.10). The Supreme Court of the Republic of Kosovo is competent to issue instructions, and principled positions and to express principled (legal) opinions on issues that are most important for the unique implementation of the law by all courts of the Republic of Kosovo (Brestovci, 2010, p.51). This court in question, although according to the law in force for the courts of Kosovo is competent to give legal opinions, regarding the issues of gaining ownership through winning prescription in the socially-owned property, we have not seen it given any opinion in this regard during this research. From the case law where

during the research we came across many cases of rejection of the request for proof of ownership through the winning prescription in the socially-owned property.

From all the findings during the research, they made us understand that although with the current legislation, provisions do not state that ownership cannot be acquired in public property, as well as the fact that in this regard has not given any opinion to the highest state court, and case law rejects these requests. It makes us understand that ownership of public property through winning prescription cannot be acquired to this day.

4.12. Procedures on how to gain ownership through winning prescription (how to become an owner) through this institute

From all that we have discussed so far, the ways of gaining ownership and in particular the winning prescription as a way of gaining ownership through various legislations, as well as according to the legislation in the Republic of Kosovo. We saw that to have a right in the right of ownership, first, you have to be the subject of the right, then there has to be the object of the right, the way of gaining the right of ownership, especially the winning prescription as a way of gaining of the right of ownership, as well as the conditions which must be met in order to especially acquire the right of ownership through this institute. From all this, we still have not become the owner, and to achieve such a thing we must initiate the procedure in order to achieve the required result.

One has to go through three stages of the procedure and become the owner of an immovable property: the stage of filing a lawsuit, issuing a court decision as well as registering in the real estate register.

4.13. Filing a lawsuit

The court cannot decide on what is not requested, because there is no other opportunity, and is not aware that an entity owes a right. Therefore, the subject of law, in this case, the possessor in good faith, must initiate court proceedings, filing a lawsuit in the competent court. The competent court in whose territory the immovable property is located is competent to request a certificate of ownership of immovable property (Assembly of the Republic of Kosovo, 2008, Article 41, p. 7). The contentious procedure starts from the moment of submitting the claim of the plaintiff, in this case, the possessor in good faith, to the defendant for response to the lawsuit (Brestovci et al., 2017, p. 236). Once it is ascertained that the conditions for starting the trial have been met, then the judge of the case schedules the hearing for the main trial of the case.

4.14. Issuance of Judicial decision, the final decision

In order to initiate a contentious procedure, a lawsuit must be filed in order to be able to achieve the goal of exercising a right that he/she claims. Since the procedure is initiated by filing a lawsuit by the plaintiff, in this case, the possessor in good faith

in the court, in the competent court, it is the competent court that decides on the issues that have been raised. According to Law No. 03/L-006 on contested procedure, Article 2.1 is quoted as saying "In the contentious procedure, the court decides within the limits of the requests submitted by the litigants" (Assembly of the Republic of Kosovo, 2008, Article 2.1, p. 1) According to Article 142.1 of Law No. 03/L-006 on contested procedure, it is stated, "The court gives decisions in court session and out of court session, Article 142.2 court decisions are given in the form of judgment or the form of rulings" (Assembly of the Republic of Kosovo, 2008). The court with a judge decides on the request that has to do with main issues and accessory issues (Assembly of the Republic of Kosovo, 2008, Article 143.1, p. 29).

After the court decides through these judgments on these issues, the court judgment becomes the legal title of the acquisition of ownership, in the case of the decision regarding the acquisition of ownership with a winning prescription initiated by the possessor in good faith. The judgment to become a legal title for the acquisition of ownership must become final, and enforceable, respectively to be used to register the property in cadastral registers of real estate.

4.15. Initiated registration of property rights in the cadastral registers of immovable rights

No matter how many procedures are carried out until the goal is achieved, your right to be the owner of an immovable property is realized by a final court decision. Although the court has ruled with a verdict and the verdict has become final, and although it has become final, we still have not achieved the goal to become the owner of the real estate for which we have confirmed the right with a court decision. In the Republic of Kosovo, to become the owner of an immovable property, you must register as the owner of a certain immovable property in the immovable property registers.

Land registers are public books in which the registration of immovable property and the rights over those immovable are done (Aliu, 2014, p. 429). The Republic of Kosovo practices the Austrian-German Land Registry System, through this system, the acquisition of the right to immovable property is done at the moment of registration in the real estate registers (Aliu, 2014, p. 430).

To register as the owner of an immovable property, based on a court decision (judgment), the judgment must be confirmatory. Thus, the judgment must be in favor of the applicant who submits the request to be registered as an owner in the real estate registers, and the judgment must be final to produce a legal effect. The request for registration of the right of ownership over immovable property is made in accordance with the legal provisions of the Law on Cadaster of the Republic of Kosovo (Assembly of the Republic of Kosovo, 2011, Article 13, p. 8).

In order to acquire ownership based on maintenance, certain conditions must be met such as good faith, possession, and fixed time.

5. CONCLUSION

This paper studied ownership and ways and methods of gaining it.

In the Republic of Kosovo, through winning prescription, as mentioned above in this paper, items are acquired when a person has possessed uninterruptedly for 10 years the movable item and he/she is in good faith on the possession of that item, then he/she also gains the right of ownership over it, while for immovable items the deadline for acquiring ownership by winning prescription is 20 years, as he/she has the property in good faith, or within 10 years if the possession is registered in the real estate registers in the cadastral registers, and there has been no objection within these deadlines.

Based on all the findings of the research, we have managed to see that in the Republic of Kosovo, immovable property can be acquired through legal titles such as contract and inheritance, and in particular, how to obtain immovable property with a winning prescription, e.g., with retention, we talked about this in the last part of this paper, where it is seen how the plaintiff managed to gain ownership based on the legal title of the illegalized contract which more or less confirms the assumption for good faith, as after the expiration of the term according to the law on legal-property relations of that time in Article 28, since the court has established that the plaintiff bought the property in 1982, where the court confirms the claim of the plaintiff for gaining ownership with retention, such a thing is also confirmed by the Court of Appeals and thus the judgment becomes final. This paper is important to all the other research that will be made because this paper includes laws of different countries, by which we have given information on how the same topic is defined in different legislations and countries. And also it will help the other researchers because now they have one more resource where they can find

more information about the acquisition of property by prescription in the Republic of Kosovo, will help them in the way of how this topic was treated in earlier times and how it is treated in modern times, by bringing the differences in legislation too. Also, one more element that explains the importance of this research is that other authors that will write on this topic will find our paper very useful because of its structure and the summary of all the most important elements that relate to the acquisition of property by prescription are discussed, as we can say "all in one, at the same time". To the other researchers, we recommend adding more examples of the process of property acquisition by prescription and analyzing them, since they have not been included in this research. The results of this study show that becoming the owner of an immovable property, through the winning prescription in the Republic of Kosovo is a great challenge. The challenges start from the fulfillment of the conditions for the acquisition of the property, through the winning prescription, then their argumentation in the court procedure by the parties is quite difficult, as well as difficult to achieve, until the issuance of the decision and its registration in the real estate registers. The results from this paper also show the right to acquire ownership through winning prescription in public property, as well as the challenges faced by the judicial system in this regard, where even against Law No. 03/L-154 on property and other property rights of the Republic of Kosovo, no provision prohibits the acquisition of ownership of socially-owned property, yet during the research conducted, the case law has not allowed the acquisition of ownership in these properties through the institute of trust. From this study, we concluded that in addition to the difficulties and challenges of gaining ownership, the issue of property in the Republic of Kosovo is in poor condition, especially given the practice of not registered property.

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