

Acquisitive Prescription as a Mean of Acquiring Ownership. an Albanian Perspective On The DCFR

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The European Conference on Politics, Economics & Law 2016
Official Conference Proceedings

Abstract

Acquisitive prescription has been for centuries a consolidated institute through which becomes possible the acquisition of ownership. The goal of this article is to analyze the real impact of DCFR (Draft of Common Frame of Reference) in creating a uniformity for acquisitive prescription rules in European Union (with a special emphasis in Albania.). After the entrance in EU, the legal provisions of Albania ought to be changed in accordance with the EU legislation. The aim of the research is that through the comparison of the legislation of some EU countries and Albania we can conclude if there are problems and how to alter some aspects of this institute in Albanian law. Firstly we shall examine the current Albanian Law and afterward the provisions of acquisitive prescription in the DCFR. In order to assess that which alterations shall be more reasonable it is important to make a comparison between some European countries (France, Germany, Italy, Spain, Greece, England) regarding : peaceful and continuous possession, Good faith versus bad faith acquisitive prescription, rei vindication suit versus acquisitive prescription suit, the amount of time elapsed, acquisitive prescription with title and without title. The sources of research work include the legal provisions of these countries, the court decisions and the recent studies of the most prominent scholars of the field. In conclusion we shall give a judgment if DCFR, aiming to a “justice” standard, can really create a uniformity in European law and which aspects of Albanian law need to be changed.

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1.Introduction

Following the decision of the European Court of Human Rights, *Pye vs United Kingdom* there has been launched an effort to reform the acquisitive prescription institute. Many scholars have suggested not only the changement of the possession period but also the annulment of the entire institute.¹ Among the countries that have introduced a reform of this institute are for example Hong Kong where the Reform Commission of law was convened in 2012 to suggest whether the possession deadlines should be reviewed² or India, where the Law Commission collected in 2016 is conducting research on some very sensitive issues regarding the institution of acquisitive prescription.³

The European Court of Human Rights on the issue *JA Pye (Oxford) Ltd vs United Kingdom*⁴ considers highly important the time of possession and considers that in the legislation should prevail "lengthy, unchallenged possession toward formal land ownership".⁵ It is precisely the extension of the possession in time and the behaviour of the possessor as a real owner during this time⁶ that leads to the loss of the property right and the application of the institute of acquisitive prescription.⁷

In Albania, possible future changes in the possession period we think that should be carried out precisely because of the provisions of the DCFR.⁸ DCFR draft recognizes the application of only two deadlines for acquisitive prescription, 10 and 30 year. The period for acquisitive prescription in good faith, of movable and immovable property is 10 years.⁹ For acquisitive prescription in bad faith it is applied the 30-year period, both for movable and immovable property. These provisions, which Albania will have

¹The determination of the appropriate periods of acquisitive prescription has been seen as a "a subject of controversy" (Katz;2007)

² The committee supported the idea that the time of possession is very important. It is exactly the passage of time the element that leads to the acquisition of property. That is why, according to the Commission, this term protects the general interest.

³ This committee is considering issues such as: should there still exist the institute of acquisitive prescription, is there a need to increase the deadline for the possessor in bad faith, should there not be applied any more the institution of acquisitive prescription of state-owned land. (LCI;2016, <http://lawcommissionofindia.nic.in>)

⁴ "Pye argued that in many other European states the limitation period was often considerably longer than the 12 years applicable in their case" (Panesar, S et;2007)

⁵ Martin.S,2008,page 2

⁶ Important for the acquisition of property is the behavior of the holder at the time of possession and not the inaction of the owner during this time. (Mazzon;2013)

⁷ In civil law countries the institute of prescription is one of the few institutes that can limit the right of ownership as "to establish time limits to the property right of the owner can come in contradiction with the concept of the right of ownership itself." (Unifying Decision of the Supreme Court.Nr.5,date 31.05.2011,page 9)

⁸Draft Common Frame of Reference

⁹These terms which are proposed in the DCFR are similar to the terms of the Italian Civil Code of 1865. The Civil Code "foresaw only two terms: one thirty-year, attributable to both immovable and movable property assets and another ten-year, restricted to immovable goods and real property rights thereon, purchased in good faith, by virtue of a title transcribed and that wasn't null because of it's form defects." (De Giorgi;2012,page 24)

to adopt after the entry into the European Union, in fact are different from Albanian law.

Thereupon a series of questions can be raised, such as: Should the term of acquisitive prescription in bad faith in the Albanian legislation be modified to 30 years for immovable property? Should there be applied different terms depending on the type of item which can be gained by acquisitive prescription?

For the above reasons it is required to analyze whether it is necessary to make changes in the acquisitive prescription period in Albania.¹⁰

2. Importance Of Time

For many researchers (Voet, 1829; Ellickson, 1989; Holmes, 1897; Abass, 2014; Galati, A., 2013; Mazzon, 2013) the possession period is one of the only elements that can serve to justify the institution of acquisitive prescription.¹¹ And as Ballantine claimed¹² “A possession which has continued for a long time without interruption, ought to prevail against all the world.”

But how many years should be “a long time”.¹³ In all the world the possession periods are quite different and vary not only depending on the legal family, but also within the countries of the same legal family. The survey of prescription deadlines in different legal systems tells us that “there is no clear pattern as regards the length of limitation periods.” (LCI, 2016).

As to whether the prescription period should be a time limit which changes depending on the situation or should be a fixed period which is set by law and changes in a few different situations, most authors (Merrill, 1986; Marais, 2011; Stubb, 2014; Radin, 1986) suggest applying a fixed period defined as mandatory by law.¹⁴

3. Factors That Determine The Possession Period

a. The connection between the possession period in acquisitive prescription and whether the right of the owner to proceed the restoration suit is prescribed or not.

¹⁰ The institute of acquisitive prescription has not had the approach that it ought to have by the Albanian researchers for the simple fact that the right of ownership was of little importance from 1945 to 1990 "Right of ownership of land faded gradually and in 1967 “de facto” there was no private property on land while with the constitution of 1976 “de jure” was finally sanctioned the fact that the land was owned by the state. (http://www.zrpp.gov.al/new/?page_id=234)

¹² Ballantine, H.; 1919

¹³ The enforcement of proof of possession lies on the possessor, who has to prove the possession has extended along all of the period prescribed by law. (Mazzon, 2013, page 57)

¹⁴ If a number is chosen, that number would be based upon the socially acceptable or “right” time it takes to become attached/detached.” (Radin; 1986, page 749)

In literature there are different opinions in relation to the fact whether the claim for restoration should be prescribed or not.¹⁵ Some authors (Burns,2011) believe that to restrict by law, within a limited time frame, the right of the owner to set up an action for the restoration is an "arbitrary restriction."

But how does the fact that the claim for restoration is limited in time in determining the periods of possession of acquisitive prescription. If the revindication lawsuit is prescribed, one of the main effects is the increase in the number of property conflicts. The owner is promoted to open as soon as possible a judicial process for the protection of his right to property. As a result of this, the monitoring costs of the owner will be higher. On the other hand, as a rule, if the monitoring costs of the owner are high, the statutory terms are generally short. So the trend is towards shorter possession deadlines, if the right of the owner to set up an action for the recovery is limited by law.¹⁶

In general, in common law countries, where the action for restoration is prescribed and the owner is encouraged to file recovery lawsuit as soon as possible, the prescription deadlines of extinguishing and acquisitive prescription are shorter. Whereas in the civil law countries where the lawsuit for restoration is considered irrevocable¹⁷ the monitoring costs are lower and generally the statutory deadlines are longer (the case of France, Germany) . Moreover "French lawyers do not see any possibility of ownership without revindication." (Jansen,2012,page 160)

In Albania, with the unified decision of the Supreme Court, No. 5, date 31.05.2011, the lawsuit for restoration of the owner is considered irrevocable. Before this decision was taken, the Albanian legislation and the researchers as well thought the restoration lawsuit was revocable, since there was no specific provision in the legislation that would recognize it as irrevocable. The Supreme Court considered this lawsuit as irrevocable based on "the nature of the institute of ownership". According to the Supreme Court the owner does not lose his right to property by not using it, but because of the mere fact that someone else has exercised an unopposed right over the property during the term of prescription.

b. Good faith or bad faith of the possessor.

If the holder is in good faith he should have a greater protection from the legislation. As a result of this possession periods should be shorter. In the civil law countries there are applied different terms to the holder in good faith and to the possessor in bad faith. On the other hand, common law countries do not recognize acquisitive prescription in good faith. For the legislation of these states, in order for the property right to be gained through prescription it is sufficient to exist an "actual and

¹⁵ The prescription of the restoration claim means that over a period of time determined by law, the owner does not have the right to sue for the recovery to demand the return of the item from the non-owner occupier. "The recovery lawsuit is a "real lawsuit" and it protects the right of ownership over individually specified items, whether they are movable or immovable." (Unifying Decision of the Supreme Court, Number.5, date 31.05.2011)

¹⁶ We say "in general" because there are countries, especially the East United States, where statutory time limits are too long, 30-40 years, although the claim of restoration is prescribed.

¹⁷ In the Civil law States the restoration lawsuit was considered irrevocable since the period of the Roman Empire. (Jansen;2012,page155)

uninterrupted”possession (LCI,2015,page 13).The common law countries such as England,USA,Canda,Australia apply a single term for both types of possession,good or bad one.But in the recent years,it has been suggested that the common law countries apply different deadlines for the holder in good faith and in badfaith.(Fennell;2006)

c. The type of registration system

In the distinguishment between two main types of registration systems,the constitutive one¹⁸ and the declarative one¹⁹Albania is part of the declarative system²⁰

Until 2009 Albanian registration system was biased more on the constitutive type,resulting also from the literal interpretation of Article 83 of the Albanian Civil Code of 1994.²¹According to this article it was necessary the signature of a notarial act of the sale of immovable property and at the same time the registration of this notarial act at the Office of Immovable Property Registry,in order for the property to pass to the buyer.If these two conditions weren't met simultaneously,the ownership can't be passed.

But the Albanian Supreme Court,in the Unifying Decision Number.1 ,date.06.01.2009 with the highly extended interpretation that made to this article claimed that "the transcription or recording is not nothing but a necessary tool to give publicity to the contract,to make known its existence and that of the owner to the third parties.The transcription has a declaratory publication function.The selling contract,as a mutual legal action,if it fulfills the requisites for its validity even if it is not recorded in the register of immovable property,it is completely valid between the parties who have undersigned it. "

In the declarative system,the property registry does not always show the true owner because ownership may have passed but the contract is not yet recorded in the register.The possessor finds it harder to ferivy the ownership through the control of the public registers.That is why a longer period of possession would justify the acquisition of property and would protect the legitimate owner who has not yet enrolled the contract in the public records.

¹⁸Constitutive system (positive system) means that "the recording has constitutive effect". So the right is obtained only at the moment of registration,and at this moment the right of ownership passes to the buyer.

¹⁹Declarative system (negative system) means that “the registration has declarative effect on the third parties.So the property right passes at the moment of the signature of the contract.Only after the registration of the contract in the property register,the person who has acquired ownership can protect the property right against third parties and gains the right of disposition.It is named a “ negative system” because the recording has blocking effects (only if the registration is done,can be transferred to the third parties the right that the purchaser has acquired.)

²⁰Unlike most of the central and eastern European countries,which applied a system of registration with constitutive effects,Croatia,Czech Republic,Estonia,Hungary,Slovakia,Slovenia.(Schmid,et;2005)

²¹ Legal action for the transfer of ownership of immovable property and the real rights over them, must be made in the form of a notary act and be registered, otherwise it is invalid.The legal action that is not made in the form expressly required by law,is invalid 'Article 83, Civil Code of Albania 1994.

Another feature of the declarative system is the fact that the possessor without title and in bad faith is not required to be registered during the time that he possesses the object (as it happens in the constitutive system in Germany, where the holder must be recorded in the property register throughout all the period that he possesses the object in order to obtain the ownership at the end of the limitation period). This registration requirement is a defense mechanism for the owner and makes it harder to gain property by acquisitive prescription. Even though this mechanism does not exist in Albania, because it has a declarative registration system, it can be offset by the extension of the statutory deadline.

d. State-owned land or private property land.

In many states the possession time limit depends on the nature and the legal significance of the goods which constitute object of possession. Generally there are applied longer terms for the acquisition with acquisitive prescription without title of the state-owned land, 60 years in England and Hong Kong, 30 years in Tasmania and New South Wales (Mulliss, 2009), 30 years in India. In some countries, such as in India, it has been suggested to remove entirely the possibility of the application of the institute of acquisitive prescription to the state-owned land (LCI, 2016). Some states, like the USA, unlike other common law and civil law states has prohibited the acquisition of ownership by prescription on state-owned land.²² In Albania, it has been prohibited during the communist regime.

Regarding the fact as to whether Albania should apply a same or different statutory time limits for state-owned land and private land, we suggest that there should be applied the same time limit. The reason is that there should be an equal treatment between the state owner and the private owner, natural or legal person. Why should the state be protected more as an irresponsible owner who hasn't taken care of his property, more than a natural or legal person (the latter can be a non-profit organization or a commercial entity.)

e. Soil type and its value (coastal land, agricultural land)

Since the period of the Roman Empire the type of land has led to the determination of the term of acquisitive prescription. The Roman Law recognized different terms for the Italian land and other terms for the provincial land.²³ This principle still applies today in some countries of the common law system (New York applies a longer term, 60 years for agricultural land and pastures, the UK applies the 60-year deadline for acquisitive prescription of coastal property.)

Agricultural and coastal lands are lands with higher value and greater impact on the economic development of the country, especially for agricultural countries like Albania. The higher the land value is, the more important is the reduction of insecurity

²² There are viewpoints (Fennell, 2006) which have suggested that this provision should be changed and there should begin to be applied in the USA too acquisitive prescription on state-owned land.

²³ For prescription with title of immovable property the 10-year period is applied to non-provincial land and the 20-year period is applied to provincial land. (Lesaffer, 2005)

costs. It is a known fact that insecurity costs²⁴ are lower if the possession period is shorter. So the higher the land value is, it has more interest for the society the shortening of possession periods. The shorter the possession periods are, the more uncertainty is reduced and the transactions for passing of property are facilitated. (Stake, 2001) This logic has been followed by the Italian legislator who applies shorter possession periods for agricultural land, known as "small rural Propriety".²⁵

This negative relation between the value of the land and the length of the period of possession was noticed in USA by a study conducted by Netter, Hersch and Manson, who studied the causes of differences in the statutory deadlines between different states of Northern America. One of the main reasons was the value of land, which provides how long should the prescription period be. "When the property has great value, there is simply a higher return to be obtained from ending potential disputes about ownership that arise from mistakes."²⁶

f. Historical factors

To see how historical factors can affect the prescription period we can analyze two countries.

First, Australia where it is noted that the statute of limitations are lower in some Australian states and higher in others. If we compare the states that have the statute of limitation of 12 years they have the population density respectively: New South Wales 9 inhabitants/km², Queensland 2.6 inhabitants/km², Western Australia 0.9 inhabitants/km² and Tasmania 7.4 inhabitants km/2. Meanwhile countries with longer terms are only two, Victoria and South Australia. But both of them have a population density that differs greatly: Victoria 25 residents km/2 and South Australia with only 1.6 inhabitants km/2.²⁷ So we can see that the various statute of limitations in Australia do not depend heavily on population density but on other factors. If we make a more detailed analysis of the Australian map we can see that in general the statute of limitation are lower in western and northern countries, countries which were occupied after the arrival in 1788 of the First Fleet of British Ships in Sydney, south-east Australia. The short prescription periods helped the occupation and development of the northern and western part, which were colonized later.

Secondly, in the USA it is the same situation, where the statutory terms range from 5 years to 40. Longer periods are applied in eastern states.²⁸ While in western

²⁴ Insecurity costs are costs which the possessor of the object faces.

²⁵ Article 1159 of the Italian Civil Code. For the agricultural land it is: *Usucapione Ordinaria* (for the possession in bad faith, with or without title) the period is trimmed from 20 years to 15 years, and *Usucapione abbreviata* (possession in good faith with title) from 10 years it is shortened in 5 years. (D'Isa; 2013)

²⁶ Bouckaert. B; Depoorter. B; 1999, page 24.

²⁷ https://en.wikipedia.org/wiki/Demographics_of_Australia#Population_density

²⁸ 25 years in Pennsylvania, 20 years in Delaware, Georgia, Massachusetts, New Jersey and 15 years in Connecticut, Virginia. (Sprankling. J; 1994)

countries, which were occupied several years later after the American discovery²⁹ periods are shorter, ranging from 10 to 7 and 5 years. (Sprankling, J.; 1994) These periods were such due to historical impact, to promote tith and development of large surfaces of arable land. (Daniel; 2014). The shorter the limitation period, the more the legitimate owner is encouraged to develop and control the land, and the more the possessor, who works the land for years and cares for it as if he were the owner, is protected.

Thereupon we emphasize that the main factor that determines the differences between prescription periods are cultural differences between countries and how a culture perceives which should be the appropriate period to create a stable relationship with the object.³⁰

g. An object which must be registered or not in the public registers.

First, regarding the land, we note that when the immovable object is registered in the public registers, this fact leads to the reduction of the insecurity of the holder, as he can easily verify who is the real owner of the item. Also, the registration of the land means that the legal situation of the owner in relation to his neighbours is stabilized, as the boundaries of the land are now clearly defined. That is why the registered land must have a greater legal protection.³¹ For this reason, many countries do not recognize acquisitive prescription in bad faith on registered land or define longer prescription terms for registered land. For example in Canada, where except the state of Alberta, other regions do not recognize the acquisition by acquisitive prescription of registered land.

However paradoxically, many states have reduced the time of possession for the acquisition with prescription of a registered land.³² For example, in England and Wales the Land Registration Act 2002 reduced from 12 to 10 years the period of limitation for the registered land. But for the unregistered land the 12-year period is still applicable.

Secondly, the movable property which are recorded in the public registers (cars, boats, airplanes)

To these items, because of the importance they have in the civil circulation, we think that should be made a similar treatment like immovable property. While in the case of movable items that are not subject of registration in the public registers we think that should be applied shorter possession periods. The main reason is that usually, the movable items which are not recorded in the public registers are items which are consumed fairly quickly and their value is lost or reduced within a very short period of time.

²⁹ Western states of America became part of it through the "Louisiana Purchase" in 1803. Through this purchase the United States bought most of the land between the Mississippi River and the Rocky Mountains.

³⁰ "Might the long time required in common law England and in the colonies, and the shorter time required in the American West, be related to cultural differences?" (Radin, 1986)

³¹ This is also the opinion of the researcher Dockray, who supports the application of longer statutory limitations in the case of registered land. (Marais; 2011, page 171)

³² Report; BIIC, 2006, page 4

h. The population density.

This factor affects mainly the acquisitive prescription of land. From the research conducted by researchers Netter, Hersch and Manson, in 1986 it was observed that longer terms were applied in those countries where "the rate of growth of population density" was the highest. (Jeffrey, Netter, 1986). For this reason, especially in the western areas of Albania it is fully justified to increase the prescription period.

i. The residence of the holder and the owner.

The residence of the parties was the main criterion in ancient Rome, where deadlines were shorter, 10 years, if they lived in the same province (inter praesentes) and the longest, 20 years if they lived in different provinces (inter absentes).³³

This rule is currently applied in France, where if the residence of the owner is not in the city where the immovable property lies, the statutory limit doubles. (LCI, 2016, page 12). It is clear that this rule protects the owner, and if he doesn't have the residence in the city where the property lies, it becomes more difficult for him to control the use of land by illegitimate holders. We think that this rule should be applied in the Albanian legislation providing greater protection for the owner.

4- Should The Possession Period Be Shortened Or Extended

Researchers are divided about whether the statutory deadlines should be shortened or extended. Most of them (Cobb, 2007; Fox, 2007; Marais, 2011; Stubb, 2014; Abass, 2014; Shepard, 2011) think that to specify a right period, thus to specify which should be "a Reasonable time", is difficult.³⁴ In general the acquisitive prescription institute has turned into a "Font of litigation". (Merril, 1986; Stake, 2001) So it is difficult to determine which is that moment in time when the object has become enough irrelevant to the owner and enough relevant to the holder³⁵ in order to be justified the transfer of property to the possessor. (Marais, 2011; Shepard, 2011).

The extension of the periods and their shortening should be examined in relation to the consequences that they bring. These consequences are of two types: micro-level effects (the impact that they have on the owner of the property and in relation to the holder) and secondly macro-level effects (how the period influences the society in general).

The trend has generally been towards reducing these deadlines. (Bouckaert, B, Depoorter, B' 1999; Dick, A, 2007; Daniel, 2014). If we analyze the micro-level effects of shorter deadlines, we can say that the shorter this period is, the more the uncertainty is reduced in favor of the holder of the object but at the same time the costs of prevention and monitoring of the owner are increased. Regarding the macro-level effects the lower the statutory deadlines are, the

³³ Sherman; 1911, page 154

³⁴ Although Epstein has suggested the application of concrete periods, 6 to 10 years for possession in good faith and 12 to 20 years for possession in bad faith.

³⁵ "but why is peace more desirable after twenty years than before." (Shepard, 2011, page 565)

easier it becomes for the society to prove judicially the possession and much more the costs of resolving disputes are reduced.(Stake,2011;Salomons.A,2011;Pozzato,2010).This macro-level effect increases the level of legal certainty in the society in general.But on the other hand, the short periods should not be favored in the case of bad faith without title possession,as they lead to the promotion of theft and fraud.(Bouckaert.B;Depoorter.B,1999;Merril,1985;Netter,Hersch,Manson,1986; Fennell;2006). On the contrary we believe that the short periods should be applied and can be quite useful in the acquisition of property with prescription on movables.(SLC;1976,page5)³⁶

Regarding the long terms,they are negatively correlated with monitoring costs.(Fennell,2006;Marais,2011;Epstein,1986)The longer the term,the more the uncertainty of the owner is reduced.This reduction of insecurity in the micro-level is reflected simultaneously in the macro-level too,because the longer periods lead to the extension of the uncertainty state of the legal situation of the parties.This state of uncertainty undermines the legal colludes in the society,resulting as a major effect the reduction of transactions between owners for the transfer of ownership.That is why the longer the limitation period is,the greater the possibility to lose evidence and to be violated the stability of the business.

In general,in developing countries,it is intended not to let the land to stay for a long time "idle",hence the possession period in these countires tends to be shorter.Prescription's main role is to provide legal certainty,³⁷and this constitutes the reason why the possession periods must be shorter in the case when the ownership system in general is in transition.The longer the time distance between a legal fact and the decision that has to be taken in relation to this fact,the more are grown the costs for the entire system in general.

But after crossing the transition phase in a country,we think that short terms of possession,regarding only acquisitive prescription without title of immovables,should not be favoured.The reason is that short deadlines encourage the loss of the proprietary ownership by accident or neglect.(Ellickson RC;1986).

Otherwise than above,we believe that the prescription periods must be shorter for prescription with title,³⁸for movable and immovable property too (whith "title" we mean the expression of the will from the owner).As the owner has expressed his own will,and especially in the case when the title was with remuneration,which is determined by the reciprocal agreement of the parties,we think that there is no reason why prescription periods should be too long,5 or 10 years,as they are applied today in the Albanian legislation.The reduction of the deadlines would help the efficiency

³⁶ Scotland undertook a study in 1976 by making a comparative analysis of the acquisitive prescription institute.In this study it was reached the conclusion that there must not be favored very long prescription periods.Short periods of a maximum of 5 years should be applied to movable objects. And for the prescription period without a title to immovable property,the Commission suggested the application of the term of 10 years,instead of the suggested period of 20 years.

³⁷ "the desirability of peace" (Shepard,2011,page 565)

³⁸ The title may be with or without compensation.

increase and the flow of goods.³⁹ A typical case is that of Portugal and Spain, which apply a 3-year period for movables and a 2-year period for movable assets which are recorded in the public registers. Whereas, concerning prescription without title, a 30-year long term will bring positive consequences in Albania.⁴⁰

5. Recommendations

We emphasize that in Albania there must be made a change in legislation, foreseeing a wider variety of prescription deadlines. Such changes have taken place years ago in other states too. For example, the current Italian Civil Code, unlike that of 1865, brought a variety of statutory deadlines, which vary depending on the type of items.⁴¹ These changes we suggest that should be applied in Albania too and not only should the terms of prescription be amended, but also should be provided specific deadlines for some kind of objects which are important for the economic development of the country. But further studies should be carried out for the alternation of the periods of acquisitive prescription, in order for these deadlines to have a positive impact on the economy in general.

First, as the drafters of the DCFR have provided, we recommend that in the case of possession of land without title, the prescription period in Albania should be extended up to 30 years. But the 20-year limit should be maintained for at least two decades, as this would help the resolution of ownership conflicts⁴². An extension of the period should be made only after the property conflicts in Albania are resolved, after the end of the process of legalization, of restitution and compensation of land and the process of registration of agricultural land.

Secondly, in the coastal lands or agricultural lands must be provided shorter prescription periods than the 30-year period. It must be noted that these areas are of great value for the development of the economy. And the greater the value of land is, the shorter the prescription period should be in order to lead to a quick conclusion of disputes.

Thirdly, for items which are recorded in the public registers should be applied longer prescription deadlines than the normal statutory deadlines.

Fourthly, we recommend that the prescription period must be shorter for movable assets that are not recorded in the public records and longest for movable assets that are recorded in the public records.

a) In relation to movables, which are not registered, the period of acquisitive prescription in good faith with title, we believe that should be reduced to 1 year and 3

³⁹ “is more efficient to leave the asset with the possessor in good faith if the owner has already replaced it by a similar one.” (Salomons, A.; 2011, page 25)

⁴⁰ The 30-year-old is applied in Germany, France, Austria, Belgium, Switzerland, South Africa.

⁴¹ De Giorgi, 2012

⁴² Applying prescription institute is suggested in those countries that have suffered for too long from conflicts of ownership, as in Cambodia. “Neither a definition nor concept of squatters exists in Cambodian laws, that is why the legal protection of those people is interpretably vulnerable.” (Phalthy; 2007, page 5)

years for the items that must be registered.⁴³ A 3-year period is considered as the most appropriate and reasonable option to be applied for acquisitive prescription with title in good faith, by various scholars. (Salomons, A.; 2011) and by the drafters of the DCFR.⁴⁴

b) The prescription period for acquisitive prescription with title in bad faith for movable assets which are registered should be reduced from 10 years that it is now.⁴⁵ This is a very long-term and potentially difficult to be applied in practice because many movable objects are consumed after the expiration of this deadline or they simply no longer exist. Therefore we suggest that a 5 year period would be considered as acceptable to be applied in today's consumer society. While the prescription period for possessor with title, in bad faith of movables that aren't registered should be 3 years.

It is precisely the existence of the title and the good faith of the holder which justifies the shortening of the periods in the case of acquisitive prescription with title in good faith. In this case should be applied shorter terms than all other types of prescription.⁴⁶

Fifthly, should be applied longer terms if the residence of the holder and the owner of the immovable item is not in the same place, or if the owner has the residence in a different city than where the property lies.

⁴³ In the debates prior to the composition of the DCFR two ideas prevailed, first the 3-year period for movable assets not registered in public records and secondly the 10-year period for items that are registered in the public records.

⁴⁴ Three years "seems to be the most frequently chosen solution"; (Salomon A, 2011)

⁴⁵ This term actually recommended by the drafters of the DCFR.

⁴⁶ De Giorgi; 2012

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