

The institute of acquiring the right of ownership by acquisitive prescription under Kosovo's law

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Abstract

A special and very important place in Kosovo's Property Law system occupies the legal norms pertaining to the Acquisition of Immovable Property by Acquisitive Prescription (Usucapio). Exactly this paper is about this subject, very interesting and debating among jurists. The purpose of this paper it is for the reader to acquire solid knowledge regarding the Acquisition of Ownership on Immovable Property by Acquisitive Prescription under the Law of Kosovo. Especially, in an analytical way we will discuss about the Acquisition of Ownership on Immovable Property by 'Usucapio' (Praescriptio). During this brief and substantive analysis we have been served with relevant legal texts, especially with Law no.03/L-154 on Property and Other Real Rights of the Republic of Kosovo and in a comparative historical view with Law no.6/80 on Basic Property Relations of the Former Socialist Federal Republic of Yugoslavia.

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1. The acquisition of ownership by acquisitive prescription under Kosovo's law

Kosovo's Law accepts these real rights: 1. Ownership, 2. Servitude, 3. Pledge, 4. Realty Charges and 5. Building Right. In this sense, the principle of the 'numeric clausus' of real rights is accepted in Kosovo's law. 'Real rights, known as 'iura in rem', on immovable property rights are gained only with the registration of the right in public registers established for this purpose.'³ 'Ownership on immovable property is obtained by: 1) Legal title (iustus titulus), which may be the derivative title (juridical action-cause) and Original title (prescription, decision of the state body, merger of things, etc.) and 2) Mode of Acquisition (modus aquirendi) which

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³ See in this regard Haxhi, Gashi, *The Registration of Ownership and Other Real Rights in Kosovo: A Critical Overview in Comparative Prospects*, „Journal of Legal and Social Issues 'LAW'”, no. 1-4/2015, published by the University of Pristina 'Hasan Prishtina', Faculty of Law, Pristina, 2016, p. 73.

in this case is the registration of the right on the Immovable Property Rights Register.⁴ When we say Acquisition of Ownership on Immovable Property by the law, we think about acquiring ownership originally (with acquisitive prescription-*praescriptio*) and vice versa.

When it comes to the Acquisition of Ownership on immovable property in a derivative way respectively with juridical actions (e.g. Sales contract, Gift contract), problematic issues are minimal. 'Acquiring Ownership in a derivative way requires two moments: the legal title (*iustus titulus*) and the other moment is *modus aquirendi*. However, Ownership is not won if the legal title is invalid, even if the thing is delivered or the right is registered.'⁵ In relation to what it said above, from case-law we can distinguish a very interesting case, where from the reasoning of the Judgement it can be inferred that: 'Transferring Ownership from one holder to another is usually done through the legal transfer of real rights. Juridical actions make it possible to transfer rights as it is Sales contract. For the Acquisition of Ownership, it is not enough only a Juridical Action, but it is also required the delivering of the thing, respectively the registration of the right of Ownership in the Immovable Property Rights Register. In the concrete case, Sales contract which is the subject of examining has been concluded according to legal provisions in force at the time of concluding.'⁶ Legal title is Juridical Action ie notarized sales contract whereas *modus aquirendi* is the registration of right in the Register for registration of Immovable Property Rights. This legal transaction is carried out in accordance with the fundamental norm provided in Article 36 of Law no.03/L-054 on Property and Other Real Rights of the Republic of Kosovo (hereinafter: LPORR of Kosovo). This fundamental norm talks about the Acquisition of Ownership by Juridical Action. 'Until registration is made, there is no Right of Ownership in that immovable property, the person in this case is merely a simple possessor of the thing.'⁷ In this sense, there is no Acquisition of Ownership unless the registration of this right in the Register for registration of Immovable Property Rights hasn't been done beforehand. 'There cannot be Acquisition of Ownership on immovable property without registering the right, because as it is said, there must be a change of registration in the Register when a right is transferred or created.'⁸ In this sense, another norm of the LPORR of Kosovo, which is the norm of Article 287, of Part VIII of the "Transitional Provisions", clearly defines: 'The Acquisition of Ownership in an immovable property unit requires entry into the registry for immovable property rights, if the registry for immovable property rights has been established and is functioning.' Meanwhile, Prescription (*Usucapio*) represents an original legal title for the Acquisition of Ownership on immovable property.

⁴ *Ibid.*, p. 83.

⁵ See more broadly in Abdulla, Aliu, *Property Law (Ownership)*, published by the Publishing Council of the University of Pristina 'Hasan Prishtina', Faculty of Law, Pristina, 2009, p. 106.

⁶ See *Judgement C.no.2932/13 dated 18.04.2016 of the Court of Appeal of the Republic of Kosovo in Pristina*.

⁷ Abdulla, Aliu, *Property Law*, fourth edition, published by the Publishing Council of the University of Pristina 'Hasan Prishtina', Faculty of Law, Pristina, 2014, p. 157.

⁸ Haxhi, Gashi, *op. cit.*, p. 83.

‘Prescription is a way of acquiring the Right of Ownership, by which the factual long-term power over one thing becomes a Juridical Power (Property) and thus harmonizes the factual situation with the legal one, which means the law aims at legalizing a long-term factual power (so that there is no discrepancy between the factual and legal situation), this is done by praescriptio institution.’⁹ It is necessary to distinguish Prescription from Statute-Barring and Preclusive Deadlines.

The right to demand performance of an obligation shall expire through statute-barring, statute-barring occurs when the period stipulated in the statute of limitations during which the creditor could demand performance of the obligation expires¹⁰, whereas with the expiration of preclusive deadlines, the right is lost because of not exercising it. Whereas, by prescription, if held in good faith (*Possessio Bona Fidei*) all the immovable property or only one part of it, after the expiration of the time provided by the law, Ownership is Acquired. Although in the absence of a concrete legal norm, where it would be decisively determined that the Acquisition of Ownership on immovable property where state is the owner is not allowed, with all these legal vacancy, we consider that the Acquisition of Ownership on immovable property where state is the owner legally cannot be done. ‘Prescription doesn't lead to the loss of the existing Ownership, because Ownership doesn't cease because of non-exercising it. It is known that Ownership doesn't cease because of non-exercise, but Ownership ceases because in the same thing the new holder acquired the original Right of Ownership by prescription.’¹¹ Kosovo's Law accepts and expressly regulates the institution of Acquisition of Ownership on Immovable Property by law (Praescriptio). LPORR of Kosovo in article 40 foresees that: ‘A proprietary possessor acquires ownership of an immovable property, or a part thereof, after twenty (20) years of uninterrupted possession.’ The possessor in good faith of the immovable property (all the immovable property or only a part of it), acquires ownership over this thing by the institute of prescription over time of twenty (20) years. Regarding Acquisition of Ownership on immovable property by Prescription, from the case law we can mention a case where the court by directly applying Article 40 of the LPORR of Kosovo came to the conclusion that: ‘It is verified that the Plaintiff: B. B. from M. is owner on the basis of Holding in Good Faith in more than 20 years of surface area of 304 m² yard and 136 m² building house, part of the cadastral parcel no. ZK Zh. P.’¹²

A principled rule regarding the Acquisition of Ownership by law (praescriptio) is found in Section VIII of the "Transitional Provisions", Article 288 of the LPORR of Kosovo, which states that: ‘A movable thing cannot be acquired

⁹ Regarding notion and typical specifications of Praescriptio (Usucapio), see Mehdi, Hetemi, *Law with Basic Knowledge on Business Law*, Fourth Reprint, 'AAB' University, Pristina, 2007, p. 187.

¹⁰ Article 341, paragraph 1 and 2 of Law no. 04/L-077 on Obligational Relationships of the Republic of Kosovo, promulgated by Decree No. DL-024-2012, dated 30.05.2012, President of the Republic of Kosovo Atifete Jahjaga.

¹¹ See more broadly in Ejup, Statovci, *Legal Property Relations in Immovable Property on KSA of Kosovo*, published by the Publishing Council of the University of Pristina 'Hasan Prishtina', Faculty of Law, Pristina, 2009, p. 262.

¹² See *Judgement C.no.459/2015 dated 06.03.2017 of the Basic Court of Mitrovica/Kosovo*.

by acquisitive prescription if the owner involuntarily lost his direct or indirect possession over it in the period between March 23rd, 1989 and the coming into force of this law'. If the abovementioned norm is analyzed in detail, it is necessary that certain essential conditions for Acquiring the Right of Ownership on Immovable Property by prescription be met. The essential conditions to be met for implementation of the institute of Praescriptio are: 1. We must have a Good Faith (Possessio Bona Fidei) of all the immovable property or just a part of it and under 2. The expiration of time provided by Law'. 'According to this legal provision (Article 40, paragraph 1 of LPORR of Kosovo) for the Acquisition of Ownership on immovable property by Acquisitive Prescription the following conditions must be met:

a) The uninterrupted possession of immovable property within twenty (20) years and

b) The good faith of the possessor.'¹³

'As other conditions can be calculated: Continuity of possession of the thing for a period of time; the thing must be obtained or acquired in Good Faith and in Iusta Causa; the thing in question must meet the necessary conditions and to have no barriers to become Ownership of the one who seeks Ownership; etc.'¹⁴ The question arises, what is relevant for the Acquisition of Ownership by acquisitive prescription? In this regard, from the case law we can mention a very interesting case, where from the Reasoning of the Judgement it derives that: 'Regarding remarks of the Court of Second Instance in relation to the verification of the fact of Possession and use of the former owner, respectively the seller (alluded to the seller I. Sh., to whom the Plaintiff had purchased this part of the disputed parcel), the Court assesses on the basis of the factual situation ascertained in this proceeding, this fact appears to be irrelevant to the case in question, since the disputed case of Acquiring the Right of Ownership on the basis of the holding-with prescription is relevant to be the period from when the plaintiff was in possession of and holding this part of the parcel, which period as mentioned above is sufficient to Acquire the Right of Ownership on the basis of Prescription.'¹⁵ The person who holds the entire immovable property or only a part of it must be in Good Faith. In Good Faith is the person who does not know and from Reasonable Circumstances is not required to know that the thing in his Possession is not his. We derive this Argumentum a Contrario from the article 97, paragraph 1 of the LPORR of Kosovo. LPORR of Kosovo defines only Possession in Bad Faith (Possessio Mala Fidei), where Article 97, paragraph 1 states that: 'A possessor is not bona fide if he or his possessory servant knew or should have known that he was not entitled to possession.'

¹³ See more broadly in Haxhi, Gaxhi, *Acquisition and Loss of Ownership under the Law on Property and Other Real Rights: The Influence of the German Civil Code in the Law of Kosovo*, „Journal of Legal and Social Issues 'LAW'”, no. 2/2012, published by the University of Pristina 'Hasan Prishtina', Faculty of Law, Pristina, 2012, p. 64.

¹⁴ Drita, Bejtullahu, *The Acquisition of the Right of Ownership (Comparison of Legislation and Relevant Legal Systems)*, International Journal for Literature, Linguistics and Interdisciplinary Studies 'ANGLISTICUM', Tetovo, 2014, p. 11.

¹⁵ See more broadly in *Judgement C.no.901/12 dated 16.04.2013 of the Basic Court of Prizren/Kosovo*.

Meanwhile, unlike LPORR of Kosovo, Article 72, paragraph 2 of the Law no.6/80 on Basic Property Relations of the Former Socialist Federal Republic of Yugoslavia of 1980 has defined Possession in Good Faith (*Possessio Bona Fidei*), which states that: 'The possession is conscientious if the holder hasn't known or couldn't have known that the property he/she is holding is not his/hers.' The possessor is not in Good Faith when the immovable property has been stolen or has been forcefully taken from the Owner. It is not at all important how long does a Possessor in Bad Faith keeps the Immovable Property in Possession. He cannot Acquire Ownership over the immovable property regardless of the time of extension of Possession, because 'Ab Initio' this state is not protected by Law because it is 'Contra Legem'. 'The possessor must be in good faith during all the time needed for prescription.'¹⁶ If the Acquisition of a Real Right depends on the Good Faith of the Transferee, Good Faith shall be presumed unless proven otherwise.¹⁷ Meanwhile, the time needed to Acquire Ownership on Immovable Property is, in principle, twenty (20) years. 'On the time required for Prescription, the time for which the Predecessors of the Current Holder have kept the thing in Good Faith is also calculated.'¹⁸ When changing the subjects of Possession, we do not have any Interruption of Possession. It is very important to note that the Deadline for Prescription can be Stopped and Interrupted, whereby we can say that all legal rules that apply to the Prescription of Claims apply "*Mutatis Mutandis*" for the Institution of Prescription. When the deadline of Prescription is interrupted, it starts running again and the time spent before the Interruption is not taken into account. The Prescription deadline is calculated from the day of getting into Possession of the Immovable Property (all the Immovable Property or only one part of it) and ends with the expiration of the last day of the deadline, which is in principle twenty (20) years. 'The heir shall become the conscientious holder from the moment of opening the inheritance even in the case when the testator was non-conscientious holder, and the heir didn't know nor could have known for that, and the time for adverse possession start to run from the moment of opening the inheritance.'¹⁹ 'The period for Prescription is interrupted even with filing the Lawsuit against the Possessor, but only if the Plaintiff has success in Lawsuit.'²⁰ The question arises, what happens to the rights of third persons when Ownership is Acquired by prescription? A third person may have different types of Immovable Property Rights on Immovable Property in which the person Acquires Ownership after the expiration of a certain period of time. For example, he may have the Right to Pass (As a Servitude Right), the Right of a Mortgage (As a Real-Estate Security Right). These Rights do not cease when a person Acquires Ownership by Prescription in an Immovable Property. These

¹⁶ Abdulla Aliu, *op. cit.*, p. 173.

¹⁷ Article 4 of LPORR of Kosovo.

¹⁸ Abdulla, Aliu, *op cit.*, p. 172.

¹⁹ Article 28, paragraph 5 of Law no.6/80 on Basic Property Relations of the Former Socialist Federal Republic of Yugoslavia.

²⁰ Regarding Interruption of Possession see Abdulla, Aliu, '*Property Law (Ownership)*', published by the Publishing Council of the University of Pristina 'Hasan Prishtina', Faculty of Law, Pristina, 2009, p. 118.

Rights continue to exist. If Ownership on the Immovable Property is Acquired by Law, the Rights of Third Persons which Rights are created before the Acquisition of Property will be Ceased unless the Possessor is in Good Faith in respect of these Rights when Acquiring Ownership.

2. Acquisition of ownership on immovable property by prescription through registration of possession

Based on Article 40, paragraph 2 of LPORR of Kosovo ‘A proprietary possessor acquires ownership of an immovable property, or a part thereof, after ten (10) years of uninterrupted possession and if he is registered as the proprietary possessor in the immovable property rights register and no objection against this registration is filed during this period.’ From the detailed analysis of the legal provision mentioned above, the conditions for Acquiring Ownership under this Legal Variant are: 1. Constant (Bona fidei) Possession for ten (10) years of Immovable Property, 2. Cadastral Registration as 3. Not registering any Objection regarding the Cadastral Registration as a Possessor over the ten (10) year term. The abovementioned conditions are also accepted by Legal Doctrine.²¹ ‘This rule is unique that exists in Kosovo Legislation, and it seems to have been intended to convert to Owners the Legal Possessors of Immovable Property possessing the Possession Sheets, which have served for the Documentation of Ownership.’²² The Certificate of Ownership is a public document which proves the Ownership while the Possession Sheet contains Data on the Immovable Property, respectively for Cadastral Parcels and their users and the same has been in the past and is still a Proof of Ownership.

3. Acquisition of ownership on immovable property by prescription through registration in the immovable property rights register

By concrete Legal Provisions it is envisaged that a person whose name appears as an Owner in the Register for the Registration of Immovable Property Rights, without being Legally Owner or without fulfilling the Legal Conditions for being the Owner, acquires Ownership of the Immovable Property if the registration of his name in the capacity of the Owner in the Register stayed for more than twenty (20) years and if no Objection is filed during this term regarding the figuration of his name as Owner in this Register. Article 41 of LPORR of Kosovo foresees that: ‘A person who without having acquired ownership is registered as the owner of an immovable property in the immovable property rights register, acquires ownership of that property if the registration has existed for twenty (20) years and the person has the immovable property unit in proprietary possession during this period. The expiry of the term is suspended for as long as an objection to the accuracy of the

²¹ Regarding conditions of Acquiring the Ownership based on Article 40, paragraph 2 of LPORR of Kosovo see especially Haxhi, Gashi, *op. cit.*, p. 65.

²² *Loc. cit.*

registration is entered in the immovable property rights register.’ ‘With this rule is foreseen the Acquisition of Ownership if these conditions are met:

- a) The Registration of Ownership on Immovable Property by a person which is Non-Owner,
- b) The Expiration of the deadline of twenty (20) years from the date of registration,
- c) Possession of the thing for twenty (20) years and
- d) No Objection to such Registration within twenty (20) years.’²³

In order to Acquire Ownership according to this Legal Variant, the person must be registered in the Capacity of the Owner in the Register for the Registration of the Rights on Immovable Property, this person Legally must not Fulfill the Conditions to be the Owner, the Expiration of Deadline of twenty (20) years from the date this person is Registered in the Capacity of the Owner, during this period there shall be no Objection regarding this Registration and, of course, the Continuous Possession of the Immovable Property for twenty (20) years. A principled rule regarding the above provision is found in Part VIII of the ‘Transitional Provisions’, at Article 289 of LPORR of Kosovo, which states that: ‘Ownership can only be acquired according to article 41 of this law if the period according to article 41 of this law, first sentence, has begun after the time in which the immovable rights register was established and commenced its activities.’ In this sense, the Register for Registration of Immovable Property Rights was established by Law (Law No. 2002/5 on the Establishment of the Immovable Property Rights Register) in 2003, from this time the Registration Activity has begun, so this means that this provision is unenforceable because it has not yet passed twenty (20) years since 2003. With Differences, but Similar, it seems to be the provision of Article 28, paragraph 4 of Law No.6/80 on Basic Property Relations of the Former Socialist Federal Republic of Yugoslavia of 1980, which states that: ‘The conscientious holder of the real estate, over which somebody else disposes of the property right, shall acquire the property right over such an object by adverse possession after expiration of 20 years.’ As Evidenced by Legal Regulation, this Law has contained the Clause of the Possession in Good Faith, while the Current Law (LPORR of Kosovo) does not contain this Clause.

4. The volume of the acquisition of ownership by prescription under Kosovo’ law

Based on Article 37 of LPORR of Kosovo: ‘The transfer of ownership of an immovable property includes the transfer of the area above the immovable property and the area below the original surface, but only if there is an interest for its performance and if by specific legislation and rights of third parties do not provide otherwise.’ Ownership on an Immovable Property lies in the space above the Land Surface and in the Area under the Surface of the Land, only to the extent that the

²³ Regarding conditions of Acquiring the Ownership based on Article 41 of LPORR of Kosovo see especially Haxhi, Gashi, *op. cit.*, p. 67.

Owner has a Legal Interest in using his Right respectively Ownership. An Exception to this rule is the Right of a Third Person, for example, the Right of Servitude, respectively the Right to Extract Water under the Landowner's Land, for the purpose of supplying fresh water or Irrigation of Land constitutes Restriction of Ownership. 'With special laws can be foreseen Restrictions on the exercise of Property Rights on an Immovable Property, eg the Mining Law foresees the Right of the State to Mineral Resources. Also with special laws can be foreseen the Restriction of Ownership for Public Interest (Cases of Expropriations).'²⁴ The Owner can not stop the Impacts that are exercised at the Height or Depth in which he has no Interest in the Exercise of Ownership. Finally, we can say that Article 37 of LPORR of Kosovo in some way Embodies the Old Roman Principle of 'Superficies Solo Cedit', according to which everything above the Land and under the Land belongs to the Landowner. 'The rule Superficies Solo Cedit (The Building above shares the same Legal Status as the Ground Beneath it) applies to those structures that are firmly attached to the Ground: a House erected on another's Land passes into the Ownership of the Landowner as part of the Property.'²⁵

5. The decisive moment for the acquisition of ownership by prescription and the character of registration of ownership under Kosovo's law

Regarding the moment of gaining Ownership by Prescription and regarding the Character of the Registration of Ownership under Kosovo's Law there are Separate Opinions among Jurists. A Large, Dominant group of Jurists thinks that the Acquisition of Ownership on Immovable Property by Law (Praescriptio) is only made when Ownership is registered in the Register for the Registration of Immovable Property Rights. Thus, this Wide Group of Jurists thinks that to Acquire Property by Law (praescriptio) on an Immovable Property, it is a Precondition to register Ownership in the Register for Registration of Immovable Property Rights. In this regard, their Approach is Rigorous and any Contrary Opinion is 'Prima Facie' wrong. This is due to the fact that, according to them, the Registration of Real Rights, in this sense of Ownership, has a Constitutive and Non-Declarative Character. A person holding twenty (20) years in Possession of an Immovable Property (all Immovable Property or Only a Part of It) to become the Owner, according to this Approach, must initiate Court Proceedings for Verification that he has become Owner on the basis of Prescription (praescriptio) and then, by this Judgment, to address the Municipal Cadastral Office in the territory where the Immovable Property is Located, upon Request for Registration of Ownership. This group of Authors thinks that even when Ownership is Originally (By Law-Praescriptio) Acquired, it must be Registered in the relevant Register. 'As an example, if Ownership on an Immovable Property is Acquired by Prescription as foreseen in

²⁴ Haxhi, Gashi, *op. cit.*, p. 63.

²⁵ Herbert Hausmaninger & Richard Gamauf, *A Casebook on Roman Property Law*, published by Oxford University, New York, 2012, p. 177.

LPORR of Kosovo within twenty (20) years, when the Possessor is in Good Faith and during this time there has been no Objection by Anyone, the Right is not Automatically Acquired. For this there must be a Court Judgement confirming Prescription and Based on the Court Judgement to Register the Right of Ownership in the Register. If the Right is not Registered the Right has not yet been Acquired.²⁶ According to this Approach, all Real Rights including Ownership, must be Registered in the Immovable Property Rights Register in accordance with Law no.2002/5 on the Establishment of the Immovable Property Rights Register of the Republic of Kosovo, pursuant to Article 2, paragraph 1 of the aforementioned Law 'Immovable property rights, as regulated by the Applicable Law, pertaining to land, buildings and apartments (hereinafter the "immovable property") shall be recorded in the Register.' Immovable Property Rights include, Inter Alia, Ownership.²⁷ Further, this Vast, Dominant Group of Jurists think that Article 4 of Law no. 04/L-009 on Amending and Supplementing the Law no. 2002/5 on the Establishment of the Immovable Property Rights Register serves as a Legal Argument as to whether the Immovable Property Rights are Registered in the Register, Inter Alia, also on the basis of a Court Judgement.²⁸ Thus, they claim that in accordance with this provision even when the Ownership is Acquired on Immovable Property by Law (Prescription), this Right must be Registered in the Register because as mentioned above the Court Judgement Serves as a Basis for Registration of Ownership in the Register. This is also based on Article 287, paragraph 1 of the LPORR of Kosovo, which states that: 'The acquisition of ownership in an immovable property unit requires entry into the registry for immovable property rights, if the registry for immovable property rights has been established and is functioning.' Finally, according to this Worldview, the Register for the Registration of Immovable Property Rights has a Constitutive Character, because if the Right isn't Registered, we can not say that there is a Legal Right, in this case Ownership.

The Arguments put forward above protected by the Majority of Jurists in Kosovo, for some other Kosovar Jurists are wrong. The Latter strongly proclaim that when Ownership is Acquired by acquisitive prescription upon the basis of a Court Judgement, this Court Judgement is Sufficient, respectively the Registration of Ownership in this case is Declarative and not Constitutive. It is the Court that decides who the Owner is, according to the Court's Judgement it is known which person is the Owner, the person in the Court's Judgement appears as the Owner, and he/she Legally is the Owner, and in this case the Registration of Ownership in the Register for the Registration of Real Rights on Immovable Property has Declarative and Non-Constitutive Character. Ownership is Acquired by the Court's Judgement and not on the Moment of Registration, regarding the Registration of Ownership, this Group of

²⁶ Regarding Registration of Ownership, see especially Haxhi, Gashi, *Registration of Ownership and Other Real Rights in Kosovo: Critical Overview in a Comparative Perspective*, „Journal of Legal and Social Issues 'LAW'”, no. 1-4/2015, Pristina, 2016, p. 77.

²⁷ Article 2, paragraph 2 of Law no. 2002/5 on the Establishment of the Immovable Property Rights Register of the Republic of Kosovo.

²⁸ Article 4 of Law no.04/L-009 on Amending and Supplementing the Law no. 2002/5 on the Establishment of the Immovable Property Rights Register of the Republic of Kosovo.

Jurists think that this is only a Formal Administrative Issue. To be more clear, registration may be either constitutive (i.e. that the transfer of ownership or the contractual creation of a real right in land will be completed only with registration) or merely declaratory. In a system with declaratory registration, usually a transfer or a real right is opposable to third parties (third party effect) only after registration.²⁹

6. Conclusion

In Kosovo's Law, the Acquisition of Ownership on Immovable Property by Law (By Acquisitive Prescription) Constitutes a Legal Title for Acquiring Ownership in an Original Way. Kosovo's Law in the Absence of a Civil Code regulates the Acquisition of Ownership on Immovable Property by Acquisitive Prescription with Law no.03/L-154 on Property and Other Real Rights. In Kosovo's Law, the Institute of Prescription (Usucapio) is known as an Institution that Transforms the Factual Situation into a Legal Situation. We saw that Kosovo's Law requires Good Faith as an Essential Condition throughout all the time of Possession of the Immovable Property to Acquire Ownership by Prescription, respectively in Kosovo it does not matter how much time the Possessor Mala Fidei (In Bad Faith) possesses the Immovable Thing because 'Ab Initio' this situation is unlawful (Contra Legem). Kosovo's Law does not Contain a Prohibitive Norm, which Decisively States that the Institute of Acquisitive Prescription can not be applied to Inalienable Public Properties, which can be considered as a Legal Vacancy which in the Future when Kosovo will have its Civil Code needs to be covered.

In Kosovo there are legal rules which state that a proprietary possessor acquires ownership of an immovable property, or a part thereof, after twenty (20) years of uninterrupted possession, a proprietary possessor acquires ownership of an immovable property, or a part thereof, after ten (10) years of uninterrupted possession and if he is registered as the proprietary possessor in the immovable property rights register and no objection against this registration is filed during this period and a person who without having acquired ownership is registered as the owner of an immovable property in the immovable property rights register, acquires ownership of that property if the registration has existed for twenty (20) years and the person has the immovable property unit in proprietary possession during this period.

Jurists in Kosovo are divided into two regarding the fact whether Registration of Ownership Acquired by Acquisitive Prescription has Declarative or Constitutive Character. The Prevailing Approach states that in order to Acquire a Real Right over an Immovable Property including here the Ownership too, the Relevant Registration for the Registration of Real Rights must occur in the Relevant Register, otherwise the Right is not Acquired. A Real Right (in particular Ownership) that is not Registered is Non-Existent. In this sense, it is a Precondition

²⁹ The document is available online at: <https://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/GeneralReport.pdf>, accessible on 15.04.2018.

the Registration of Ownership in the Register for the Registration of Immovable Property Rights because the Right is not Automatically Acquired on the basis of a Court Judgement, but the Court's Judgement serves as 'Iustus Titulus' to Register the Ownership. Ownership Registration Phase is Considered as 'Modus Aquirendi'. If not Registered the Right has not yet been Acquired.

Meanwhile the other Group of Jurists thinks that by the Court's Judgement it is known which person is the Owner and in that case the Registration of Ownership in the Register for Registration of Immovable Property Rights has Declarative and Not Constitutive Character. Regarding Ownership Registration, this Group of Jurists thinks this Issue is only a Formal Administrative Issue.

In order to Remove Legal Dilemmas, Legal Vacancies and to Discontinue Debates among Jurists in Kosovo, the Assembly of the Republic of Kosovo while Drafting Legal Norms of the Civil Code must draft also a Legal Norm which will Regulate this Issue and Decide, whether the Registration of Real Rights including Ownership in Kosovo has Constitutive or Declarative character. This Inevitably needs to be done by the lawmakers.

Also, Kosovo's Law is Missing for a Court Judgement of the Supreme Court which would Unify Judicial Practice and Remove Dilemmas among Jurists regarding Character of the Registration of Real Rights including Ownership. Further, unfortunately, the Supreme Court of Kosovo has been Unable despite the Legal Authorization that derives from the Law on Courts to issue a Legal Opinion or a Principle Attitude and thus Unify the Law and Remove the Dilemmas among Jurists about the Declarative or Constitutive Character of the Registration of Real Rights including Ownership. In the Absence of these Judicial Acts, the Supreme Court of the Republic of Kosovo Remains in the Future to Seriously Address this Issue and take the Appropriate Steps in this Regard.

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