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Regulation of Tabulary Usucapion in the Romanian Civil Code

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Abstract: Usucapion is a way of acquiring the right of ownership over an asset through long-term possession and the fulfillment of certain legal conditions. In Romanian law, usucapion is regulated in the Civil Code, and one of its special forms is tabular usucapion, provided for by art. 931. Tabular usucapion aims to consolidate the right of ownership for persons who are registered in the land register as owners, but whose title of ownership has proven null or voidable. This institution is specific to the real estate advertising system based on the land register and aims to stabilize the civil circuit by protecting those who have acquired a property in good faith. Unlike common law usucapion, which requires 10 or 30 years of possession, tabular usucapion allows the acquisition of the right of ownership in 5 years, provided that the possessor has been registered in the land register and has exercised possession in a public and peaceful manner.

Keywords: usucapion; tabular; bona fide; possession; peaceful

1. Introduction

The right to property is one of the most fundamental and protected civil rights, and its acquisition can take place in various ways, including through usucapion. Usucapion is an original way of acquiring property, based on long-term and uninterrupted possession, exercised in good faith and under the appearance of a real right. A particular form of this institution is tabular usucapion, regulated by the Romanian Civil Code in force since 2011, as a novelty compared to the previous regulation.

Tabular usucapion is an essential legal instrument in the real estate advertising system, which allows the consolidation of the right of ownership for owners registered in the land register, but with a defective title. It aims to correct discrepancies between the legal reality reflected in the land register and the factual situation, when the registration in the land register was made on the basis of a non-existent title or affected by a serious defect. This institution combines elements of traditional usucapion with the principles of public record specific to the real estate advertising system.

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By reducing the possession term to 5 years, this institution protects the safety of real estate transactions and the security of the civil circuit, allowing the correction of title defects without affecting the rights of bona fide third parties.

Being a mechanism adapted to the land registry system, tabular usucapion contributes to clarifying the legal situation of real estate and avoiding property disputes, having a fundamental role in Romanian real estate law.

This paper aims to analyze the conditions, effects and implications of tabular usucapion in the Romanian legal system, highlighting its particularities compared to other forms of usucapion and its role in strengthening the security of the civil real estate circuit.

2. The Concept and Importance of Tabular Usucapion

Tabular usucapion is a special form of acquiring the right of ownership over a property, regulated by art. 931 of the Romanian Civil Code. It applies exclusively to real estate registered in the land register and aims to consolidate the right of ownership for persons who, although registered in the land register as owners, have a null or voidable title.

This legal institution is essential for the security of the civil circuit (Muraru & Tanasescu, 2006, p. 30) because it protects bona fide owners and ensures the stability of property rights over real estate.

Tabular usucapion is a legal institution expressly introduced in the current Romanian Civil Code (Law no. 287/2009, republished), as part of the reform in the field of real estate advertising and consolidation of the security of civil legal relations. It represents a special form of usucapion, which aims to correct errors in the land advertising system, especially in cases where the registration in the land register of the property right or another real right was made on the basis of an apparent title, but lacking legal validity (absolutely null, non-existent or fictitious).

The notion of "tabular usucapion" derives from the fact that this type of usucapion presupposes the existence of an entry in the land register, on the basis of which the possessor acted in the legitimate belief that he is the owner. The difference from classic usucapion lies precisely in this "tabular" component – that is, in the connection between possession and real estate advertising. According to art. 931 of the Civil Code, the possessor of a real right to real estate, registered in the land register, may acquire it by usucapion if he has possessed it for 5 years, based on an undisputed registration and an apparent title.

The importance of tabular usucapion lies in ensuring the stability of the civil circuit and in protecting trust in real estate advertising. In a land registry system, such as the one regulated by the Romanian Civil Code, the land register must faithfully reflect the legal reality of the properties and the rights over them. However, in practice, situations may arise in which a right is registered on the basis of a legal act that, subsequently, proves to be null or non-existent. In such cases, tabular usucapion intervenes as a mechanism for legalizing the factual situation – to the extent that the possessor acted in good faith and possessed the property for a reasonable period.

Therefore, this institution has an essential role in balancing legal interests: on the one hand, it protects bona fide possessors who have relied on the appearance of legality, and on the other hand, it prevents the disruption of the civil circuit through late or abusive claims. In addition, tabular usucapion contributes to strengthening the principle of real estate publicity and to achieving the principle of trust in the land register, both essential in a modern civil law system.

3. Conditions of Tabular Usucapion

Tabular usucapion is a legal institution regulated by art. 931 of the Romanian Civil Code, which allows a person to acquire the right of ownership over a property registered in the land register, despite the existence of a null or voidable title. This is a special form of usucapion, applicable in the context of real estate advertising (Rizoiu, 2013, p. 42) with an essential purpose of ensuring the security of the civil circuit and protecting bona fide possessors.

In order for tabular usucapion to be recognized, it is necessary that a series of strict legal conditions be met, both in terms of possession of the property and the legal status of the title deed. These conditions are fundamental to ensure fair protection of real rights over real estate and to prevent possible abuses.

Next, I will analyze the most important legal conditions (Baias, Chelaru, Constantinovici and Macovei, 2012, p. 65), which must be met for tabular usucapion to operate, emphasizing their role in consolidating property rights and stabilizing legal relations in the real estate field, namely:

1. Registration in the land register

- The person requesting tabular usucapion must have been registered in the land register as the owner of the property.
- The registration must have been made based on a legal act transferring ownership (e.g.: sale-purchase contract, donation).

2. The title of the registration must be null or void

- The legal act on the basis of which the registration in the land register was made must be affected by absolute or relative nullity.
- Example: if a property was purchased from a person who was not the true owner, the contract is void, but if the possessor acted in good faith, he can acquire the right of ownership through tabular usucapion.

3. Possession in good faith

- The possessor must have had good faith at the time of registration in the land register.
- Good faith means that he reasonably believed that his title was valid and that he acquired the property from the true owner.

4. Exercise of possession for 5 years

- Possession must be:

- Peaceful (without major conflicts with other people claiming ownership);
- Continuous (without significant interruptions);
- Public (exercised visibly, without concealment);
- Under the name of the owner (the possessor must behave as if he were the rightful owner).

5. Recognition of usucapion by court decision

- Tabular usucapion does not operate automatically, but must be established by a court decision.
- The possessor must prove the fulfillment of all conditions before the court.

Therefore, the analysis of the conditions of tabular usucapion highlights its special character within the mechanisms for acquiring the right of ownership provided for by the Romanian Civil Code. Unlike classic usucapion, which only assumes long-term and uncontested possession of an asset, tabular usucapion assumes the existence of an entry in the land register in favor of the possessor, even if this was made on the basis of an apparent title or affected by a serious defect.

The conditions imposed by art. 931 of the Civil Code are precise and cumulative: (1) the existence of an apparent title, (2) the entry in the land register of the right acquired by that title, (3) continuous, public, peaceful possession and in the name of the owner for at least 5 years, and (4) the absence of a contestation of the entry during this term. These requirements reflect a balanced vision between the need to protect the possessor in good faith and compliance with the legality of legal acts.

The regulation of these conditions has a dual purpose: on the one hand, it allows the regularization of legal situations arising from errors of form or defects in the documents, and on the other hand, it provides a clear legal framework for the defense of rights acquired through possession and good faith. Thus, tabular usucapion is not only a way of acquiring property, but also an instrument of legal and social stability, intended to protect trust in the real estate advertising system.

In conclusion, the conditions of tabular usucapion are designed to ensure a balance between legal reality and the written evidence in the land register, thus promoting a modern, safe and functional civil law. Strict compliance with these conditions by the courts guarantees the correct application of the institution and contributes to the achievement of a coherent and efficient legal system.

4. Procedure for Recognizing Tabular Usucapion

Tabular usucapion is a legal mechanism regulated by Article 931 of the Romanian Civil Code, which allows a person to acquire ownership of a property registered in the land register, even when its title is null and void or voidable. It is based on the fact that possession in good faith and the fulfillment of certain legal conditions can lead to the consolidation of the property right, thus protecting the possessors who have held a property in a public and peaceful manner for a determined period of time (5 years).

In order for tabular usucapion to be officially recognized, a judicial process is necessary in which the court must establish the fulfillment of the legal conditions and issue a court decision (Stoica, 2021, p. 37). Subsequently, this decision must be registered in the land register in order to produce definitive legal effects.

This procedure is essential for the stability and security of property rights over real estate, aiming to protect bona fide owners and consolidate factual situations in which people who have owned a property for a significant period of time can acquire ownership of it, even if their title to the property was initially vitiated.

The procedure for recognizing tabular usucapion is carried out in the following steps:

1. Filing the action in court

- The person requesting tabular usucapion must file an application with the court in whose jurisdiction the property is located.
- The application must be accompanied by documents proving registration in the land register, possession and good faith.

2. Proving the conditions of usucapion

- Evidence is administered, including extracts from the land register, legal documents, witnesses, expert reports.
- It is verified whether possession has been exercised continuously for 5 years.

3. Court decision

- If all conditions are met, the court issues a decision confirming the owner's ownership right.

4. Registration of the right in the land register

- The final court decision is communicated to the cadastre and real estate publicity office to carry out the final registration of the ownership right.

The procedure for recognizing tabular usucapion is an essential legal mechanism for establishing and consolidating the right of ownership over a property when the registration in the land register was made on the basis of an apparent, but null or non-existent title. This procedure, indirectly regulated by the correlation of the provisions of the Civil Code and the legislation on the land register, necessarily involves judicial intervention, since the recognition of the right acquired through usucapion is achieved by a court decision.

The judicial nature of the procedure reflects the importance and complexity of tabular usucapion, given that the court must rigorously verify the fulfillment of all legal conditions: the existence of a tabular registration in favor of the possessor, continuous and peaceful possession for 5 years, as well as the absence of a contestation regarding the registered right. The court will also analyze the good faith of the possessor and the absence of defects that could affect the useful nature of the possession.

Therefore, the recognition of tabular usucapion is not a simple administrative act, but a contentious procedure, which involves a substantive trial with the administration of the necessary evidence (extracts from the land register, documents, witness statements, etc.). The court decision has a constitutive effect and is the basis for the definitive registration of the property right in the land register, giving rise to a right that can be opposed erga omnes.

In conclusion, the procedure for recognizing tabular usucapion has a fundamental role in guaranteeing the security of the civil circuit and in ensuring coherence between the legal reality and the land records. It offers a legal way to regularize factual situations consolidated over time, in which bona fide possessors have exercised their right as true owners. Thus, tabular usucapion, through its recognition procedure, contributes to strengthening the principle of legal certainty and to the efficient functioning of the real estate advertising system in Romania.

5. Effects of Tabular Usucapion

Tabular usucapion, as a special form of usucapion regulated by the Romanian Civil Code, is a legal institution intended to ensure the stability and security of the civil circuit, especially in the matter of real property rights. It responds to an important practical need: that of correcting the inconsistencies between the legal reality reflected in the land register and the factual situation in which a possessor, in good faith, peacefully and continuously exercises possession over a property. In this context, tabular usucapion proves its usefulness not only as a way of acquiring property, but also as an instrument of confirming apparently valid rights, but latently vitiated.

The regulation of this institution is found in art. 931 et seq. of the Civil Code and assumes the cumulative fulfillment of several conditions, including: the existence of an entry in the land register in favor of the possessor, possession exercised in a useful manner for at least 5 years, as well as the lack of contestation of the right during the period of possession. Once these conditions are met, the law recognizes the holder registered in the land register as the owner, even if the title on the basis of which the registration was made was null and void or non-existent.

The effects of tabular usucapion are profound and complex. They are not limited to the acquisition of the right of ownership, but also aim to consolidate the effects of registration in the land register, protect the bona fide possessor and, last but not least, eliminate any subsequent claims from third parties who have not exercised their rights within the legal term. At the same time, through its effects, tabular usucapion contributes to the realization of the principle of legal certainty and legitimate trust in the real estate advertising system.

The effects of tabular usucapion are significant, having a direct impact on property rights, the stability of real estate legal relationships and the security of real estate transactions. These effects are also essential for the protection of bona fide persons who, although they were registered in the land register on the basis of a defective title, can consolidate their property rights through continuous and uninterrupted possession. The effects of tabular usucapion consist of:

• Definitive acquisition of the property right – The person who meets the conditions becomes the owner with retroactive effect from the date of registration in the land register.

• Legal certainty of the civil circuit – This form of usucapion ensures the stability of the property and avoids conflicts of law.

• Opposition to third parties – If a bona fide third party has previously acquired the property right and registered it in the land register, tabular usucapion cannot be invoked against him.

6. Conclusion

Tabular usucapion, regulated by art. 931 of the Romanian Civil Code, is an essential legal mechanism for consolidating property rights in the land registry system. It provides protection to individuals who, although registered in the land registry as owners, later discover that their title to property is null and void or voidable.

By reducing the required possession period to 5 years, tabular usucapion ensures a balance between the security of the legal circuit and the protection of real estate rights. The conditions imposed – possession in good faith, exercised peacefully and uninterruptedly, as well as the need for a court decision – contribute to the creation of a secure and predictable legal framework (Bîrsan, 2020, p. 47).

The regulation of tabular usucapion in the Romanian Civil Code represents a significant progress in consolidating the security of real estate legal relations and in adapting the Romanian legal system to the requirements of a modern legal framework, focused on real estate advertising. This institution reflects the need to balance two fundamental values in civil law: the legality of property titles and the need for stability and predictability in the civil circuit.

Tabular usucapion, introduced by the provisions of art. 931 et seq. of the Civil Code, intervenes in cases where a real right has been registered in the land register on the basis of an apparent title, and possession has been exercised peacefully, continuously and in good faith for at least 5 years. Therefore, this special

form of usucapion does not only have a function of acquiring property, but especially one of correcting deficiencies in the land register records, when this does not reflect the legal reality.

An essential aspect of tabular usucapion is that it is based on the idea of legitimate trust in the real estate advertising system. In a state governed by the rule of law, citizens must be able to rely on the accuracy and enforceability of the entries in the land register. If a person acquires a property on the basis of an apparently valid deed and is registered as the owner of the right, then possesses the property in compliance with the legal conditions, then tabular usucapion comes to legally confirm his position acquired in a real and legitimate manner.

The regulation of tabular usucapion is also a reflection of the influence of Germanic-type legal systems, especially the Swiss and German models, where the land register has a central role in defining and enforcing real rights. The Romanian Civil Code has taken over this modern conception of the real estate advertising function, correlated with a usucapion that supports social and economic stability, eliminating uncertainty over the legal regime of real estate.

At the same time, tabular usucapion is not an institution without rigor. The law establishes strict conditions for its application, such as the need for a title registered in the land register, but which has not been formally annulled by a court, as well as the existence of continuous possession and in accordance with the characteristics of the acquired right. Also, the good faith of the possessor and the absence of contesting the right for at least 5 years are key elements for consolidating the acquisitive effect.

Another important element is the fact that tabular usucapion contributes to relieving the courts of litigation regarding the validity or nullity of some titles, by removing over time possible conflicts generated by defects in legal acts. Thus, it has a pacifying role within civil law, favoring a natural evolution of real rights in society and ensuring greater confidence of citizens in the land register system.

In conclusion, tabular usucapion represents a modern, functional and necessary institution in the architecture of contemporary Romanian real estate law. It is the expression of a balance between protecting legitimate rights acquired through possession and defending the general interests of the legal order. In a constantly evolving social and economic context, tabular usucapion offers an efficient legal mechanism for clarifying and consolidating the legal situation of real estate, thus contributing to a better functioning of the civil circuit.

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