

Acquisitive prescription in Roman law and its reflection in modern private law codes

Abstract

Acquisitive prescription is a legal institute, which function is to reconcile state of fact with state of law. This institute served especially to acquire ownership for possessor of the thing by lapse of prescribed time, but it should also serve to acquire other laws, such as servitudes. This thesis focuses mainly on Roman law form of acquisitive prescription. In order to properly understand the concept it is essential to perceive it in relation to a unique conception of Roman property law including all its specifics and differences from current view on ownership.

First part of the thesis is dedicated to Roman ownership concept and its basic characteristics. Subsequent part describes the development through which the acquisitive prescription in Roman law proceeded during its existence. The thesis focuses on particular institutes such as *usus auctoritas*, *usucapio*, *praescriptio longi temporis* and *praescriptio longissimi temporis*. Firstly a form of acquisitive prescription in ancient and pre-classical era is investigated. The subject of interest here is the term of *auctoritas*. The next part of the thesis is focused on classical form of acquisitive prescription, where this type of acquisition was termed as *usucapio*. The basic five conditions demanded for *usucapio* were investigated, i.e. *possessio*, *tempus*, *res habilis*, *bona fides* and *titulus*. At the end of this part the thesis aims at searching of roots of *praescriptio longi temporis* and Iustinian form of the institute, including *praescriptio longissimi temporis*.

The next section continues with the research on development of acquisitive prescription in the Czech territory. In ABGB the acquisitive prescription was put together with prescription. An influence of Iustinian codification on its form is significantly apparent. During the socialist era, legal system was not very favourable to acquisitive prescription and related institutes such as possession, application of this institute was firstly limited by Civil Code no. 141/1950 Sb. and then it was even excluded by Civil Code no. 40/1964 Sb. By the amendment no. 131/1982 Sb. to the Civil Code acquisitive prescription returned to Civil Code, however in very brief form. Unfortunately the post-revolutionary amendment no. 509/1991 Sb. to the Civil Code did not resign fully on previous legislation and it did not

modify acquisitive prescription in detail. Finally the current Civil Code no. 89/2012 Sb. changed the previous legislation significantly including acquisitive prescription. It is inspired by ABGB, and therefore it returns to Roman law roots of institute.

Key words: acquisitive prescription; *usus auctoritas*; *usucapio*; *longi temporis praescriptio*.