

# Usucapion and the Conflict with Public Property Rights – Legal Limitations

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## **Abstract**

*Usucapion, also known as acquisitive prescription, represents an original way of acquiring the right of ownership, based on possession exercised continuously, peacefully and publicly, under the conditions and for the duration established by law. However, this legal institution encounters an essential limitation regarding its applicability to goods belonging to the public domain. The right to public property, regulated by the Romanian Constitution (art. 136 paragraph 4), is characterized by inalienability, imprescriptibility and insecurities. Thus, goods in the public domain cannot be acquired by usucapion, regardless of the good faith of the possessor or the duration of possession.*

*The Romanian Civil Code (art. 922 paragraph 2) reinforces this prohibition, expressly excluding the possibility of usucapion over goods that form the object of public property. This exclusion is justified by the general interest and the need to protect the patrimony of the state or of administrative-territorial units.*

*The jurisprudence of the High Court of Cassation and Justice, as well as of the Constitutional Court, has reinforced this orientation, stating that the imprescriptibility of the right to public property is an absolute constitutional guarantee. However, in practice, situations of uncertainty regarding the legal status of certain assets frequently arise, especially in the absence of their registration in the land register or official inventory, which can lead to conflicts between bona fide owners and public authorities.*

*To avoid these disputes, a clear and public record of assets in the public domain and a coherent administrative reform are necessary, which would strengthen the security of the civil circuit and avoid abuses or errors of legal qualification. In conclusion, although usucapion is a useful mechanism for stabilizing property relations, its applicability is*

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*legitimately restricted when it conflicts with the imperative of protecting public property.*

**Keywords:** *Usucapion; public property; private property; possession; conflict*

## 1. Introduction

The institution of usucapion, established in civil law as an original way of acquiring property, is based on the idea of stability and security of legal relations, by protecting the bona fide possessor who exercises useful possession over an asset for a long period, under the terms of the law. It has the role of sanctioning the passivity of the holder of the real right and of conferring legal certainty to factual situations that persist over time. However, this mechanism for consolidating legal reality contradicts another fundamental principle of law: the protection of public property rights.

The Romanian Constitution establishes in art. 136 para. (4) that assets belonging to the public domain are inalienable, imprescriptible and unseizable, thus guaranteeing their preservation and perpetuation in the patrimony of the state or of the administrative-territorial units. As a result, usucapion is inapplicable with regard to these assets, regardless of the duration of possession or the behavior of the possessor. This aspect is also reaffirmed by the Civil Code (art. 922 paragraph 2), which expressly provides for the exclusion of assets in the public domain from usucapion.

This absolute prohibition is not without controversy and practical implications. In many situations, the legal regime of some assets is not clearly defined, especially in the absence of appropriate evidence in public registers (land register, inventory of public assets). Thus, fertile ground is created for litigation, where the possessors can invoke good faith and long-term possession, while public authorities invoke the constitutional protection regime of public patrimony.

Therefore, the analysis of the relationship between usucapion and public property rights requires a careful examination of the legal framework, judicial practice and possible solutions for legislative or administrative clarification. This paper aims to approach this topic from a doctrinal and jurisprudential perspective, in order to highlight the legal limits of usucapion and their implications on property relations in contemporary Romanian law.

## **2. Normative and constitutional framework of the conflict between usucapion and public property right**

In Romanian law, the relationship between usucapion and public property is defined and limited by a coherent set of constitutional and legal norms, intended to protect the general interest and regulate the legal circulation of goods. This normative framework explicitly establishes that goods that form the object of public property cannot be acquired through usucapion, thus configuring a principled limitation of this fundamental institution of civil law.

### ***2.1. The Constitution of Romania – the foundation of the imprescriptibility of public property***

The Constitution of Romania, in art. 136, regulates the legal regime of property, clearly distinguishing between public and private property. Paragraph (4) of this article provides that:

*“Public property goods are inalienable. They cannot be alienated, nor concessioned, nor given under administration or free use except under the conditions provided for by law”* (Constituția României, 2003, art. 136 alin. 4).

From this formulation follows a fundamental principle of public law: public property is inalienable and imprescriptible, and these characteristics exclude the possibility of losing the right through non-exercise or possession by a third party. In other words, the state cannot lose the right to public property through passivity, as is the case with private property subject to usucapion.

The imprescriptibility of the right to public property is not a simple legislative option, but a constitutional guarantee, justified by the nature and destination of these goods: they are affected by a public use or interest and serve the functioning of state institutions or the satisfaction of collective needs (roads, rivers, ports, natural resources, etc.).

### ***2.2. Civil Code – express regulation of the limitation of usucapion***

The Romanian Civil Code, which entered into force in 2011, enshrines the institution of usucapion in Title VI, articles 922-935. It recognizes two main forms of usucapion: 10-year usucapion (in the case of possession in good faith and with just title) and 30-year usucapion (uninterrupted and unimpaired possession, regardless of good faith).

Article 922 paragraph (2) introduces an express exception: “Goods that are the object of public property cannot be acquired by usucapion” (Legea nr. 287/2009, art. 922 alin. 2).

This rule strengthens the constitutional prohibition and eliminates any possibility of extensive or analogous interpretation. It reflects a constant concern of the legislator to keep public assets outside the private circuit, categorically excluding the application of the usucapion mechanism to them.

In addition, the Civil Code does not condition the exclusion of usucapion on a certain form of publicity or a previous registration of the asset in the official registers. Thus, even in situations where a public asset is not highlighted in the land register or in the official inventory, its imprescriptible character remains unaltered.

### *2.3. Law no. 213/1998 on public property*

The special law that defines and delimits the content of public property is Law no. 213/1998. According to it, the public domain is composed of:

“Movable and immovable assets which, according to the law or by their nature, are of public use or interest and which belong to the state or to administrative-territorial units” (Legea nr. 213/1998, art. 1 și 3).

This law also provides that public domain assets are imprescriptible and cannot be acquired through legal acts transferring ownership or through possession.

The law distinguishes between the legal public domain (established by law) and the conventional public domain (established by decisions of public authorities), but in both cases, the legal regime of inalienability and imprescriptibility is maintained.

### *2.4. The importance of the distinct legal regime*

The justification for the distinct legal regime of public property is based on the general interest nature of the assets in question. They do not serve only individual right holders, but a community, a defined public purpose. Therefore, the legislator has granted these assets superior protection, reflected by the total exclusion of private law mechanisms that could lead to their exit from public property without an express legal basis.

The exclusion of usucapion is, therefore, an expression of the supremacy of the public interest in relation to the principles of consolidation of private possession. Any legal regime that would allow the acquisition of public assets through usucapion could lead to the

diminution of public assets and, implicitly, to the impairment of public services or essential infrastructure.

### **3. The legal nature of the conflict**

The legal conflict between the institution of usucapion and the public property regime is not accidental, but structural, resulting from the opposition of principle between two distinct legal regimes: civil law and public law. On the one hand, usucapion operates within the private logic of consolidating possession and stabilizing property titles, while public property is protected by imperative public order norms, which prohibit any form of alienation or private acquisition.

#### ***3.1. Usucapion: a mechanism of stability in civil law***

In private law, usucapion constitutes an original way of acquiring property, based on a useful possession – that is, public, peaceful, continuous and in the name of the owner – exercised for 10 or 30 years, depending on the legal conditions. Its legal function is to sanction the passivity of the apparent owner and to reward long-term possession, in order to ensure the security of legal relations and the civil circuit (Avram, 2016, p. 287).

Being a typical civil law mechanism, usucapion is applicable exclusively to goods subject to the legal circuit of private law. It assumes that the good is alienable and prescriptionable, that is, it can be acquired or alienated and, at the same time, can be the object of a possession that, over time, gives rise to real rights in favor of the possessor.

#### ***3.2. Public property: a prohibited domain for usucapion***

On the other hand, public property is regulated by constitutional and administrative law norms, having a special legal regime, characterized by inalienability, imprescriptibility and inaccessibility, according to art. 136 paragraph. (4) of the Constitution and art. 863 of the Civil Code. These attributes exclude the application of any private law acquisition mechanism, including usucapion (Pop, Popa, & Vidu, 2020, p. 456). Therefore, the conflict between the two institutions is not accidental, but results from their belonging to two different branches of law, each with its own values and functions. Private law aims at the stability of intersubjective relations and the protection of effective possession, while public law protects collective patrimony, affected by the general interest, against any form of private “approach”.

### ***3.3. Conflicting nature: apparent or real?***

A doctrinal trend considers that there is no actual conflict between usucapion and public property, but an objective inapplicability of the former in relation to the latter. This position states that usucapion cannot operate in the case of inalienable goods, because the lack of negotiable character excludes them from the scope of private law norms (Florian, 2019, p. 310). Thus, it could be argued that there is no “collision”, but a jurisdictional delimitation between areas of legal regulation.

However, in practice, numerous factual situations demonstrate that this conflict is a real one: bona fide possessors exercise long-term acts of possession over assets that are subsequently classified or claimed as belonging to the public domain. These situations generate disputes between individuals and public authorities, in which the courts must qualify the legal regime of the asset in order to determine the applicability or inapplicability of usucapion. Therefore, the nature of the conflict is legal-practical: it arises when two normative regimes claim opposing rules on the same situation.

### ***3.4. Conflicts of legal qualification***

In the absence of rigorous evidence of public assets (such as their registration in the land register or inclusion in official inventories), confusion of legal regimes may occur. For example, land that has been in the possession of individuals or legal entities for decades, but which subsequently appears to belong to the public domain (e.g. roads, canals, water banks), becomes the subject of conflicts of rights.

In these cases, the conflict is not only theoretical, but based on the lack of clarity and predictability of the legal regime of the asset, which affects both the owner's property rights and the authority of the state or the UATs in managing public assets. The courts are thus called upon to decide whether the asset is effectively public (and, therefore, imprescriptible) or whether it can be acquired by usucapion, which requires a careful verification of the legal and factual regime applicable to the asset in dispute.

#### **4. Practical problems and apparent conflicts in the application of usucapion on public assets**

##### ***4.1. Introduction: the context of apparently contradictory conflicts***

Although the legal framework regarding the incompatibility between usucapion and public property rights is, in principle, clear and restrictive, in practice, litigious situations and conflicts of qualification frequently arise. These conflicts concern not only the applicability of legal norms, but also the identification of the legal regime of the asset and the verification of its possible impairment of public use or interest.

Many of these problems are due to administrative and record-keeping deficiencies, such as the lack of updating of inventories of public assets or the failure to register in the land register, which generates confusion between the regime of public property and that of private property of the state or UATs.

##### ***4.2. Lack of adequate advertising of assets in the public domain***

One of the most frequent causes of practical conflicts is the absence of clear and updated registration of public assets in the real estate advertising register. Although Law no. 213/1998 and the Administrative Code require public authorities to draw up inventories of the assets that make up the public domain (Guvernul României, 2019, art. 287), in reality, these obligations are frequently unfulfilled or delayed.

Thus, bona fide owners can occupy and maintain real estate for decades, without being aware that they belong to the public domain. In these cases, the courts are faced with the problem of qualifying the legal regime of the property: whether the property is indeed affected by a public use or whether, on the contrary, the behavior of the authorities was equivocal or passive.

A typical example is the land related to communal roads, which are often occupied by locals, without the city hall having delimited or tabulated the public property. In such cases, the question arises whether the effective non-affecting of the property of a public interest still justifies maintaining its public regime, with the consequence of excluding usucapion.

### *4.3. Wrong or uncertain qualification of the legal regime of the property*

Another frequently encountered problem is the lack of correlation between the legal reality and the factual-administrative reality. It often happens that a property is used exclusively by private individuals or legal entities, without any manifest public interest, but is considered, by an older administrative decision, to be part of the public domain.

In this context, the practice of the courts tends towards a functional approach to the legal regime: if the property is not effectively affected by public use, if there is no real public use, and the possession is long-term and uncontested, situations can be identified in which usucapion is admitted over assets initially considered to belong to the public domain, but which no longer have this affectation (Nicolae, 2019, p. 501).

An emblematic case is Civil Decision No. 1073/2016 of the Braşov Court of Appeal, where the court found that a land that had previously been registered in the public domain of a commune no longer served any public purpose and allowed the acquisition of the property right by the bona fide possessor, considering that the impairment of the property had been only formal, not effective (Curtea de Apel Braşov, 2016).

### *4.4. Divergent interpretations in jurisprudence*

Even if the provisions of the Civil Code and the Constitution are, apparently, firm regarding the imprescriptibility of public assets, judicial practice is not uniform. There are decisions in which the courts have recognized the acquisition by usucapion of supposedly public real estate, on the grounds that:

- there was no effective impairment at the date of filing the action;
- the asset was not correctly identified in the inventory of the public domain;
- the public authority tolerated or even encouraged private possession of the real estate.

These solutions generate a normative gray area, in which the criteria for identifying the legal regime are no longer exclusively formal (the existence of an administrative act or registration in the Civil Code), but also factual (use, maintenance, lack of action by the authority).

However, this practice is dangerous from the perspective of the security of public assets. By allowing usucapion based on the passive

conduct of the authorities, the courts risk diluting the imprescriptible nature of public property.

#### *4.5. Transitional situations and the transformation of the legal regime*

Another problematic category is that of goods that change their legal regime over time: for example, goods transferred from the public domain to the private domain of the state or the UATs, by administrative decisions. In these cases, if possession began during a period in which the good was public, but continued after its transfer to the private domain, the question arises: when does the term of usucapion begin to run?

The majority doctrine considers that the term of usucapion cannot run while the good is in the public domain, but that it can start from the moment of the legal transfer to the private domain, provided that this transfer is effective and public (Stoica, 2020, p. 412).

Although the principle of the imprescriptibility of public property is firmly enshrined in constitutional and civil law, its application in practice faces significant difficulties, caused by administrative ambiguities, unclear legal regimes and the passive conduct of the authorities. These elements favor the emergence of apparently contradictory conflicts between the possessors and the formal holders of public law. In order to guarantee legal coherence, a clear, accessible and up-to-date record of public property is required, as well as a unitary jurisprudence that balances the need to protect public property with the legitimate rights of bona fide possessors.

### **5. Conclusions**

The conflict between usucapion and public property rights highlights an area of tension between two fundamental legal interests: on the one hand, the protection of public patrimony, which serves the general interest and benefits from a public order regime (inalienability, imprescriptibility, insensitivity); on the other hand, the security of the civil circuit and the recognition of the acquisition of property through long-term possession, as an expression of the stability of legal relations.

Formally, both the Romanian Constitution (art. 136 paragraph 4) and the Civil Code (art. 861 - 863) enshrine the imprescriptibility of the public property right. This imprescriptibility derives from the property being affected by a public utility and assumes that the holder – either the state or the administrative-territorial units – cannot be

dispossessed through inaction or passivity. Therefore, usucapion cannot operate on goods that, by their nature or destination, are excluded from the civil circuit.

This exclusion is legally justified by the public order regime that accompanies public property: assets in this category are inalienable, unseizable and imprescriptible, precisely in order to protect their collective and strategic character. In this logic, usucapion, as a form of acquiring property through simple possession, is fundamentally incompatible with the regime of absolute protection offered to public assets.

In legislative terms, the Romanian Constitution and the Civil Code expressly prohibit the acquisition by usucapion of assets that are part of the public domain. However, judicial practice reveals numerous situations in which the legal regime of assets is uncertain, either due to the lack of clear cadastral records or due to the passivity of public authorities. In such cases, the courts are forced to make a functional analysis of the situation, examining whether the asset is effectively affected by a public use or interest, and whether there has been a long-term tolerance of the possession by the public authority.

This reality requires a nuanced approach, which would allow for the effective protection of the public domain, without ignoring situations of good faith and equity. At the same time, an administrative and legislative reform is necessary to ensure the complete and updated tabulation of public assets, the avoidance of ambiguous legal regimes and the strengthening of the role of the court in clarifying the legal nature of the asset. However, judicial and administrative practice brings to light numerous apparent conflicts, arising from difficulties in qualifying the legal regime of assets. Especially in rural areas or smaller localities, many plots of land are not correctly tabulated, and public records are incomplete or outdated. Thus, bona fide owners can occupy and maintain real estate for decades without knowing that they formally belong to the public domain.

These situations lead to litigation in which the courts must decide between the defense of public property and the recognition of rights accumulated over time by apparently legitimate owners. In the absence of clear criteria for differentiating between effective public property (real, affected by public use) and formal public property (only included in an inventory in writing), courts are faced with balancing decisions between imperative norms and equitable factual situations. In conclusion, in order to avoid conflicts and to ensure a balance between the public interest and the stability of property rights, it is

essential that civil law and administrative law norms be applied coherently, within a clear and predictable regulatory framework.

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