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## Analysis of Possible Cases of Acquisitive Prescription of Public Properties Presented on Example of Selected Area<sup>2</sup>

**Abstract:** The main purpose of this research paper is to analyze the conditions, extent, and reasonable grounds for the acquisitive prescription of public real properties (i.e., those owned by the state treasury and local government units), taking into account the exclusion time for public properties to be subject to the possibility of prescription. The acquisitive prescription of real properties is one of the methods used to regulate the legal status and for the owner to obtain a title of ownership for the property.

The analysis was carried out on the example of the city of Krakow. This allowed me to assess the causes and effects as well as the scale of the practical implementation of this legal institution. The final results of the performed research study are proposed actions that should be taken as part of the public property management process aimed at protecting ownership rights by means of stopping the course of acquisitive prescription. The results of the research studies have proven the legitimacy of introducing legal regulations limiting the possibility of the acquisitive prescription of public properties.

A comparison of the reasonable grounds and dates of the acquisitive prescription of the real properties in Poland with those in force in other countries (such as the United Kingdom and Germany) was also performed.

**Keywords:** acquisitive prescription, public properties, protection of ownership rights

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## 1. Introduction

One of the methods for a possessor to obtain the ownership title to a property is via acquisitive prescription. By sanctioning the factual circumstances, this allows us to eliminate a long-lasting inconsistency between legal status and actual possession. The legal regulations amended in 1990 allow us to file applications for the prescription of public lands with no exceptions.

The research consisted of an analysis of the legal and factual status of real estate located in Krakow that had previously been the property of the municipality of Krakow for which the court had delivered judgments on prescription. The source material was the surveying of and legal documentation on real properties owned by the municipality of Krakow covered by acquisitive prescription during the years of 2012–2017 as well as the current and historical legal regulations regarding the acquisitive prescription of public properties.

On the example of the selected area (city), the research studies aimed to define the following:

- the number and surface areas of public properties that have become private property as a result of acquisitive prescription,
- the most frequently occurring conditions and reasonable grounds for the acquisitive prescription of publicly owned properties,
- the possible legal and surveying activities aimed at stopping the course of acquisitive prescription and, consequently, protecting public property.

A comparative analysis of the reasonable grounds and required dates for acquisitive prescription in other countries (i.e., Great Britain and Germany) was also carried out.

The author of this research paper decided to tackle this issue due to the lack of any studies on the practical assessment of the consequences resulting from public properties (i.e., those owned by the state treasury and local government units) being subject to acquisitive prescription. Previous studies constituting commentaries to the civil code [1–3] have addressed the issue only in a theoretical manner.

This study presents a practical analysis of the consequences of the institution of acquisitive prescription relating to public properties owned by a selected municipality. The conducted research will allow us to assess the scale of the problem as well as the conditions and the direction of modifying the legal provisions to protect public property.

## 2. Reasonable Grounds for Acquisitive Prescription

In its judgment of October 28, 2003 [4], the Constitutional Tribunal declared that the constitutionally determined principle (from which derogations are only exceptionally allowed) is the inviolability of the ownership right. Acquisitive prescription is a deviation from this principle, and it is a far-reaching one.

Any property may be subject to acquisitive prescription regardless of the owner and property type. By virtue of law, acquisitive prescription results in the existing owner losing their right and the spontaneous possessor being granted the right with no regard to the predecessor's rights; thus, this is the original manner of ownership right acquisition.

In order to acquire real estate through acquisitive prescription, the following two conditions resulting from the provisions of the civil code [5] must be met:

- holding property in the form of spontaneous possession,
- lapse of a statutory period of possession.

Possession of real estate leading to acquisitive prescription must take the form of spontaneous possession. Taking possession of a property based on a lease agreement, for example, is dependent possession. In order to determine whether the possession is spontaneous, it may sometimes be required to refer to the basis of taking possession of the property [6].

External manifestations of spontaneous possession may differ depending on the intended purpose, type, and location of the property as well as its use. In the judicature of the Supreme Court, building a fence, developing a parcel (or other manner of its management), taking care of its maintenance (in a non-deteriorated condition), making expenditures, deriving benefits, or paying real estate public levies are mentioned as manifestations of spontaneous possession.

The essence of acquisitive prescription is the acquisition of ownership by the spontaneous possessor as a result of the lapse of the period of uninterrupted possession specified by the act [5]; i.e., 20 years in good faith and 30 years in bad faith.

The good or bad faith of the spontaneous possessor is not a reason for acquisitive prescription; it only affects the length of the prescription period required by the act. Good faith consists of the possessor's reasoned belief that they have the right to hold the thing and, according to well-established case-law, they actually exercise this right [7].

The currently binding dates of acquisitive prescription were introduced by the Act of July 28, 1990, amending the act – Civil Code [8].

Before the above-mentioned amendment entered into force (i.e., before October 1, 1990), a real property could have been acquired provided that it had been held for an uninterrupted period of 10 years in good faith and 20 years in bad faith. Thus, when the acquisitive prescription had been validated before the amendment, the shorter deadlines applied.

With respect to public properties, other prescription dates applied. This resulted from the provisions on the exclusion of acquisitive prescription with respect to the properties owned by the state treasury that were in force from July 21, 1961, to October 1, 1990. In Article 7 of the Act of July 14, 1961, on land management in cities and residential areas [9], such state-owned land located within cities and residential areas (and also outside their boundaries but included in the land use plan

of the city or residential area and intended for the implementation of its management tasks) were excluded from acquisitive prescription. On the other hand, Article 177 [10] ruled out the possibility of acquisitive prescription of real properties owned by the state treasury.

Article 177 was repealed as of October 1, 1990, pursuant to the act [8] currently allowing individuals to acquire real properties owned by the state treasury and local government units through acquisitive prescription.

At the same time, Article 10 of act [8] introduced transitional provisions: under these provisions, if acquisitive prescription of the real property was excluded prior to the date of the entry of this act into force pursuant to the then-current regulations and pursuant to the regulations in force, after this act entered into force acquisitive prescription occurs. This acquisitive prescription runs from the date of its entry into force. However, this period is shortened by the time that for which the above status existed prior to the entry of this act into force, but not by more than half.

When compared to the regulations in force in Poland, the performed analysis of acquisitive prescription in other countries (such as the United Kingdom and Germany) revealed some differences as far as the reasonable grounds and required dates of acquisitive prescription are concerned.

Acquisitive prescription in the United Kingdom is regulated by statutory and precedent law. Claims on acquisitive prescription are based on the following legal acts and court decisions:

- Limitation Act of 1980 [11],
- Land Registration Act of 2002, Schedule 6 [12],
- *Powell v McFarlane* [1977], [13],
- *J A Pye (Oxford) Limited v Graham* [2002], [14],
- *Buckinghamshire County Council v Moran* [1988], [15].

In order to successfully apply for acquisitive prescription in the United Kingdom, the applicant must meet certain requirements:

- actually hold the property for the required period,
- demonstrate constructive possession of that property (also called possession in law – the ability to exercise control over the property, even without physical contact with it).

For land not entered into the land and mortgage register (unregistered), the provisions of §15 and 17 of the Limitation Act of 1980 [11] shall apply. Section 15 of the above-mentioned act stipulates that the right of a person to take action to recover land shall expire after 12 years. Pursuant to §17, the ownership title of the “paper” owner (i.e., a person who does not actually hold the property) expires after 12 years. As a consequence, after a lapse of 12 years, the owner loses the right to land that they do not hold, which deprives them of the possibility of requesting its release by the possessor.

Provisions of Article 17 of the act [11] do not concern land that is entered into the land and mortgage register. In this case, Schedule 6 to the Land Registration Act of 2002 [14], which stipulates that the claim for prescription may be filed after ten years, shall apply. In such a situation, the owner who is entered into the land and mortgage register shall be notified about the claim and may lodge an effective statement of objections.

In some cases, much longer terms of acquisitive prescription shall apply:

- for land owned by the Crown – 30 years,
- for waterfront land owned by the Crown – 60 years,
- for land that belongs to a liquidated enterprise (the company's assets after dissolution will pass into the ownership of the Crown as ownerless property or 'bona vacantia') – 30 years
- for land owned by the Anglican Church – 30 years.

In Germany, only properties with an organized land register are subject to acquisitive prescription. A person who remains the spontaneous possessor of the land for a period of 30 years (even if in bad faith) may exercise acquisitive prescription. If the owner is entered into the land register, the proceedings for acquisitive prescription are only allowed if that person died or went missing and if no entry has been made for 30 years in the land register for which the owner's consent is required. The decision of the court forms the basis for the entry of the possessor into the land register; from that moment, the possessor acquires property rights to this land (§ 927 BGB [16]).

### **3. Analysis of Process of Acquisitive Prescription of Public Properties Illustrated on Example of City of Krakow**

The subject of the analysis were the conditions and prerequisites for acquisitive prescription as well as the number and area of the real properties owned by the municipality of Krakow that were subject to acquisitive prescription during the period of 2012–2017. The analysis was based on the surveying and legal documentation of the real properties owned by the municipality of Krakow that were subject to the acquisitive prescription during the same period.

The performed analysis demonstrated that natural and legal persons who are spontaneous possessors of land owned by the municipality of Krakow can acquire property rights through acquisitive prescription. This mostly applies to home gardens, courtyards, or land adjacent to real properties owned by the applicants.

Table 1 compares the number of applications and decisions on acquisitive prescription of land owned by the municipality of Krakow during the years of 2015–2017 divided into individual cadastral units (former administrative districts).

**Table 1.** Summary of number of submitted applications and court decisions on acquisitive prescription of land owned by municipality of Krakow (2015–2017)

Cadastral unit	District				Total	Number of resolved cases [%]
	Śród- mieście	Kro- wodrza	Pod- górze	Nowa Huta		
Number of applications for acquisitive prescription	32	63	74	74	243	–
Number of cases resolved by court	14	17	24	28	83	–
Number of court decisions on acquisitive prescription	8	15	17	23	63	76
Number of court decisions refusing acquisitive prescription	4	1	3	4	12	14
Number of court decisions on discontinuation of acquisitive prescription proceedings	2	1	4	1	8	10

Source: own study based on data from Krakow City Council Department of Treasury

As I have demonstrated in Table 1, 83 cases were resolved out of a total number of 243 applications for acquisitive prescription of land owned by the municipality of Krakow that were submitted by the possessors without legal title during the years of 2015–2017. The court adjudicated on the acquisitive prescription of 63 properties, discontinued the proceedings in 8 cases, and refused acquisitive prescription in 12 cases. The percentage share of the cases in which the court adjudicated on acquisitive prescription was 76% of all cases resolved by the court during the analyzed period.

Table 2 presents the number and surface areas of the real properties owned by the municipality of Krakow subject to acquisitive prescription by spontaneous possessors during the years of 2012–2017 divided into individual cadastral units.

As demonstrated in Table 2, acquisitive prescription covered 158 properties of the municipality of Krakow during the years of 2012–2017, with a total area of approx. 10 ha – the largest of these was located in Nowa Huta (6.3216 ha), and the smallest was in Śródmieście (0.4704 ha). In the remaining cadastral units, the areas were at a similar level (approx. 1.5 ha each).

The performed analysis demonstrated that the acquisitive prescription of properties owned by the Krakow municipality was based on them being held by spontaneous possessors or their legal predecessors back in the 1970s (i.e., during the previous political system). In most cases, the courts base their decisions on the tes-

timonies of witnesses (most often neighbors) confirming the possession of the land by the applicants. Since the municipality of Krakow is the owner of approximately 28,000 cadastral parcels, it is difficult to control the actual status of possession.

**Table 2.** Number and surface areas of properties owned by municipality of Krakow subject to acquisitive prescription during years of 2012–2017 in individual cadastral units

Cadastral unit	Number of properties subject to acquisitive prescription	Surface areas of properties subject to acquisitive prescription [ha]
Śródmieście	11	0.4704
Krowodrza	38	1.5430
Podgórze	54	1.5336
Nowa Huta	55	6.3216
Total	158	9.8686

Source: own study based on data from Krakow City Council Department of Treasury

One of the conditions that results in the unauthorized possession of land is the unregulated legal status of public properties as well as the manner of managing land registers in the past.

The process of establishing land registers in the 1970s consisted of determining the boundaries of cadastral parcels according to the state of possession without taking into account the state of ownership. As a consequence, cadastral parcels were created that included combined “mortgage bodies” (i.e., cadastral parcels owned by various entities) [17]. Such a method of establishing land registers in the 1970s (which was according to the actual state of possession and without taking into account the state of ownership) favored the possession of properties by entities without legal titles.

Considering the reasonable grounds of acquisitive prescription, the lapse of the period provided by the law is important (20 years in good faith or 30 years in bad faith).

#### **4. Surveying and Legal Activities Carried out to Stop Course of Acquisitive Prescription of Properties**

Interrupting an acquisitive prescription period is a method used to prevent its validation.

The main objective of the research was also to identify the activities aimed at limiting the acquisitive prescription of public properties by interrupting the course of this process.

Such activities include:

- regulation of the legal status by concluding agreements on the use of public properties (e.g., lease agreements),
- control of the actual state of possession,
- recovery claim for the release of property filed under Article 222 [10],
- application for the initiation of enforcement proceedings aimed at regaining the right to hold a property,
- summons of the possessor for arbitration regarding the release of a property under Article 184 [10].

The above-mentioned conciliatory mode (in the form of a summons of the possessor for arbitration regarding the release of the property) also interrupts the running of acquisitive prescription [18]), as confirmed by the Supreme Court in [19].

These activities should be preceded by surveying and legal documentation aimed at identifying the subject of possession by legal and natural persons, including the boundaries of a property as well as the conditions and manner of its development. It is also necessary to prove the ownership status of a real property covered by a request for release.

## 5. Conclusions

The essence of the matter of acquisitive prescription is the original acquisition of ownership rights by a spontaneous possessor due to the lapse of time (i.e., 20 years in good faith and 30 years in bad faith).

During the period of July 21, 1961, through October 1, 1990, the provisions on the exclusion of acquisitive prescription with respect to the properties owned by the state treasury applied. Having repealed these regulations, the interim provisions regarding public properties held by spontaneous possessors before October 1, 1990, were introduced.

The research conducted in the municipality of Krakow demonstrated that, during the years of 2012–2017, acquisitive prescription covered 158 properties owned by the municipality of Krakow with a total area of approximately 10 ha, with the largest one located in Nowa Huta (6.3216 ha) and the smallest in Śródmieście (0.4704 ha). In the remaining cadastral units, the surface areas were at a similar level (approximately 1.5 ha each).

In most cases, applications for acquisitive prescriptions were preferable for the applicants. The conducted research studies demonstrated that, during the years of 2015–2017, 76% of the cases ended with a confirmation of acquisitive prescription. The courts predominantly base their decisions on the testimonies of witnesses (most frequently neighbors). One of the conditions resulting in unauthorized land possession is the unregulated legal status of public properties as well as the manner

of management of the land register in the past (having been conducted according to the actual state of possession and without taking into account the state of ownership), which favored the possession of properties by entities without legal titles.

Therefore, it is important from the point of view of a proper management of public properties to take actions to stop the course of acquisitive prescription. These actions include a recovery claim for the release of a property, an application for the initiation of enforcement proceedings aimed at regaining the right to hold the property, a summons of the possessor for arbitration to release the property, and the regulation of the title to the property for the benefit of a person who actually holds the land by concluding lease agreements, usage agreements, etc.

In relation to public properties, it seems reasonable to introduce regulations limiting their acquisitive prescription, such as tightening deadlines in the aspect of protecting the rights of the state treasury and local government units.

The above conclusion is confirmed by a comparison of the reasonable grounds and dates of acquisitive prescription with those in force in other countries (e.g., in the United Kingdom, where a 30-year period is required for public lands without the possibility of it being shortened).

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## **Analiza zasiedzenia nieruchomości publicznych na przykładzie wybranego obszaru**

**Streszczenie:** Celem artykułu jest analiza uwarunkowań, zakresu oraz przesłanek zasiedzenia nieruchomości stanowiących własność Skarbu Państwa oraz jednostek samorządu terytorialnego z uwzględnieniem okresu wyłączenia dopuszczalności zasiedzenia nieruchomości publicznych. Zasiedzenie nieruchomości jest jednym ze sposobów regulowania stanów prawnych i uzyskiwania tytułu własności nieruchomości przez jej posiadacza.

Analizę przeprowadzono na przykładzie nieruchomości z obszaru miasta Krakowa. Pozwoliła ona na ocenę przyczyn i skutków oraz skali zastosowania w praktyce tej instytucji prawnej. Końcowym efektem badań jest propozycja działań, jakie powinny być podjęte w ramach gospodarowania mieniem publicznym w celu ochrony własności przez przerwanie biegu zasiedzenia. Wyniki badań wskazują na zasadność wprowadzenia uregulowań prawnych ograniczających możliwość zasiedzenia nieruchomości publicznych.

Porównano także przesłanki i terminy zasiedzenia nieruchomości w Polsce z obowiązującymi w innych krajach, tj. w Wielkiej Brytanii i Niemczech.

### **Słowa**

**kluczowe:** zasiedzenie, nieruchomości publiczne, ochrona własności