

GROUNDNS AND CONDITIONS FOR ACQUISITION OF OWNERSHIP OF IMMOVABLE PROPERTY BY PRESCRIPTION

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INTRODUCTION

The Civil Code of Ukraine provides for the grounds for acquiring ownership of property. One of these grounds is the acquisition of ownership by the statute of limitations. The obligatory condition of acquisition of the property right under the acquisition prescription, in particular the acquisition of the property right for the property prescription, are those circumstances in which the property claimed for acquisition by the person (natural or legal) must have the status of landless property and which cannot be considered as belonging to the property, the right of which is acquired in accordance with the provisions of Art. 330–333, 336–339, 343 of the Civil Code of Ukraine. Thus, the right to ownership of immovable property is based on certain circumstances, which are determined by the legislation of Ukraine. The Institute of Acquisition is quite interesting. The provisions of Art. 344 of the Civil Code of Ukraine establishes a list of conditions necessary for the acquisition of ownership of the property by prescription, through which the contents of this civil law institution are revealed.

The provisions of Part 1 of Art. 344 of the Civil Code of Ukraine provides that the owner of immovable property who conscientiously, openly and for 10 years continuously owns the specified real estate, which is not his property, may acquire the right of ownership of this immovable property by prescription. The analysis of the mentioned norm shows that the statute of limitations should be defined as the legal structure of the acquisition of the right of ownership of immovable property by the statute of limitations. Hence, there are a number of legal facts within the legal composition, such as the seizure of real estate, possession of real estate and terms of ownership of real estate. Each of these legal facts must correspond to the qualifying features such as – good faith possession of real estate, open ownership of real estate, long and continuous possession of real estate. For the acquisition of real estate in the property according to the statute of limitations has a tenure of 10 years, and also requires the availability of additional legal facts – the recognition of ownership in court and the state registration of ownership of real estate. Finding out the procedure and peculiarities of acquiring ownership of immovable property by the statute of limitations requires the disclosure of the civil legal concept of “real estate”.

It should be recalled that in legal literature and law practice it is stated that in accordance with the requirements of Art. 182 of the Civil Code of Ukraine, Art. 3 of the Law of Ukraine “On State Registration of Property Rights to Real Estate and their encumbrances”, the right of ownership of immovable property under the statute of limitations, is acquired from the moment of state registration of the immovable property and the adoption of the relevant court decision on the recognition of the ownership of the immovable property by prescription. Hence the approach that “if the owner of the real estate did not register this real estate, then he will not be able to acquire ownership of the real estate specified by the statute of limitations”¹. This, apparently, was based on the analysis of the wording stated in the provisions of the Civil Code of Ukraine: “... a person who conscientiously took possession of another’s property” (Part 1 of Article 344 of the Civil Code of Ukraine), whereby the object of the statute of limitations is property belonging to the property right to another person who has registered his property in due course. A similar conclusion can be drawn from the analysis of the case-law on the consideration of cases of recognition of ownership by statute of limitations.

1. The subjective composition of the statute of limitations as the basis for the acquisition of ownership of real estate

It should be agreed with D.D. Lupenyk, who stated that “courts have no right to refuse a claim for recognition of the right of ownership of immovable property only after the reasons for the lack of state registration of the ownership of real estate”². It should be noted that today most of the cases pending before the courts on claims for recognition of ownership of immovable property by prescription, relate to immovable property which took place at a time when the law did not provide for mandatory state registration of rights to Real Estate. In this connection, the provisions of h. 3, 4 Art. 3 of the Law of Ukraine “On state registration of real rights to real estate and their encumbrances”, according to which: “rights to real estate that have arisen before January 1, 2013, are recognized as valid under the conditions: 1) if the registration of such rights was carried out in accordance with legislation in force at the time of their occurrence; 2) if, at the time of such rights, legislation was in force that did not provide for their mandatory registration and in the cases specified in Art. 28 of the Law of Ukraine “On state registration of real rights to real estate and their encumbrances”³.

¹ Дйба І. Набувальна давність. *Юридичний вісник України*. 2005. № 44 (540). С. 14–18.

² Луспенік Д. Спори про набувальну давність: проблеми теорії і судової практики. *Юридичний журнал*. 2006. № 5 (47). С. 114–118.

³ Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень: Закон України від 01.07.2004 р. № 1952-IV. *Відомості Верховної Ради України*. 2004. № 51. Ст. 553.

Equally important in the context of the study of the statute of limitations as a basis for the acquisition of ownership of real estate is to find out its subject composition. In civil science there is no single approach to determining the range of subjects of limitation, as scientists interpret the rules of Part 1 of Art. 344 of the Civil Code of Ukraine, where the general term “person” is used. Therefore, analyzing the positions of scientists, it is impossible to disclose the subjective composition of the statute of limitations, which is also explained by the fact that the subject of legal relations (persons who took possession of real estate in good faith and continue to own it openly and long-term) and the subject of law (persons – owners of real estate, and persons who have acquired the right of ownership of immovable property by prescription) are regulated by Art. 344 of the Civil Code of Ukraine, do not always coincide.

The provisions of Art. 2 of the Civil Code of Ukraine it is determined that the participants in civil legal relations are natural and legal persons, as well as the state and state bodies and other subjects of public law. The stated norm divides the participants of civil relations into subjects of private and public law. However, used in Part 1 of Art. 344 of the Civil Code of Ukraine, the term “person” gives no reason to conclude that it can be applied directly to public law entities. However, when analyzing the provisions of Chapter 2 and Chapter 24 of the Civil Code of Ukraine, which regulate the emergence of rights and obligations to acquire property rights, the term “person” is used for individuals and legal entities. Thus, the provisions of Art. 344 of the Civil Code of Ukraine does not exclude the participation of territorial communities and the state in the relations regarding the acquisition of the right of ownership of immovable property by the statute of limitations. This assumption is based on the provisions of Art. 167–169 of the Civil Code of Ukraine, namely: “these entities for the exercise of rights and obligations in civil relations may be created by legal entities of public law (state authorities, local self-government bodies, state and communal enterprises, educational institutions) that enjoy they have the same rights and responsibilities as other participants in civil legal relations with respect to immovable property (Article 82 of the Civil Code of Ukraine). Thus, legal entities can be subject to obligations and property relations. As a rule, such legal persons exercise the ownership, use and disposal of real estate under the right of economic management or operational management.

Considering the above, in the relations with the real estate, the subjects of the respective legal relations may be individuals, legal entities of private law and legal entities of public law⁴. In the first two cases, the legal entity is the

⁴ Стаценко О.С. До питання особливостей набуття прав на нерухоме майно за набувальною давністю в Україні. *Правові та інституційні механізми забезпечення розвитку України в умовах європейської інтеграції: матеріали Міжнародної науково-практичної конференції* (м. Одеса, 18 травня 2018 р.). У 2-х т. Т. 2 // відп. ред. Г.О. Ульянова. Одеса: Видавничий дім “Гельветика”, 2018. С. 527–529.

same as the entity, in the latter case, the legal entity and the legal entity are not the same. Such conclusion was expressed by the position of the Ministry of Justice of Ukraine, stated in the explanations dated October 13, 2011 “On some aspects of acquisition of ownership of the property of the landless real estate”, according to which “acquisition of the ownership of the real estate for a long time ago is possible – what is the subject of civil legal relations⁵”.

According to the analysis of the provisions of Art. 344 of the Civil Code of Ukraine give the opportunity to conditionally divide the terms of acquisition of ownership of immovable property by prescription into separate categories, in particular those related to possession (integrity and openness of ownership) and those related to tenure (continuity possession).

In the civil law of Ukraine, the integrity of the ownership of real estate is defined as a condition of taking possession of real estate, without distinguishing it among the openness and continuity. The above indicates the reflection in the provisions of the civil law of Ukraine on the relations with the acquisition of ownership of immovable property by prescription, the Roman approach to determine the integrity of ownership of immovable property to acquire ownership of this immovable property, having legal value at the time of immovable property property⁶. However, some scholars argue that “the integrity of ownership must be proved not only at the time of seizure of real estate but also throughout the period of possession of real estate”⁷.

Before finding out the meaningful content of the category of good faith in the statute of limitations, it should be noted that its existence is connected with the division of ownership into legal and illegal. Although the Central Committee of Ukraine, does not directly attribute such division of ownership into species, from the analysis of its provisions it is seen that the category of “honesty”, as well as the category of “dishonesty”, characterizes the most unlawful possession, since both the bona fide and unscrupulous owner acquired the property without a proper right. grounds and out of will of the real owner of the property.

It is generally accepted in domestic legal science to disclose the content of the terms of the statute of limitations on the integrity of the seizure of real estate, taking into account the provisions of Part 1 of Art. 388 of the Civil

⁵ Обдимко Ю.С. Деякі аспекти набуття права власності на об'єкти беззазяного нерухомого майна. *Офіційний веб-сайт Міністерства юстиції України*. URL: <http://www.minjust.gov.ua/37181>

⁶ Дождев Д.В. Римское частное право: учебник. 2-е изд., изм. и доп. / Под ред. В.С. Нерсесянца. Москва: Норма, 2004. 542 с.

⁷ Печень О.П. Приобретательная давность. Харьковская цивилистическая школа: право собственности: монография / Под ред. И.В. Спасибо-Фатеевой. Харьков: Право, 2012. 302 с.

Code of Ukraine, which contains the definition of “conscientious purchaser”. This concept is revealed through the categories of “did not know” and “could not know”, which characterize the erroneous attitude of the acquirer of property to the volume of property rights of the transferor under the contract. It should be noted that the range of persons who may be subject to statute of limitations is wider and is not covered by the notion of “good faith purchaser”. It is believed that the seizure of real estate in this case may occur not only on the basis of a contract of repayment, but also on the basis of other transactions with which the law relates to the transfer of ownership, including inheritance.

Given this, the subject of the statute of limitations in Part 1 Art. 344 of the Civil Code of Ukraine can be defined as a person who took possession of real estate on the basis of a transaction and at that moment could not know that he does not receive ownership of the specified real estate⁸. In law enforcement, the condition of the statute of limitations on good faith seizure of real estate often acquires other content that enables the rightful owner of the property (for example, by contract) or even the actual owner of the real estate to use this civil institute in the absence of title documents. Integrity in such cases is justified by the actions of the person regarding the maintenance, repair of property, payment of taxes, etc. In the case law (more often at the level of the courts of first instance), there are many cases of satisfaction of claims for recognition of ownership of real estate by the statute of limitations for persons who rented housing, owned official housing, etc.

Note that the acquisition of ownership of unmanaged real estate by acquisition is not explicitly provided for in Art. 335 of the Civil Code of Ukraine, which regulates the acquisition of ownership of unmanaged things. However, the above is not an obstacle to the attribution of landless real estate in domestic legal science, on the basis of a comprehensive interpretation of Art. 335, 344 of the Civil Code of Ukraine, to objects of limitation⁹ and the recognition by the courts of the right of ownership of such immovable property by prescription. Since, in accordance with the provisions of Part 1 of Art. 335 of the Civil Code of Ukraine: “not only is the landlord not a property that has no owner, but also a thing whose owner is unknown, the purchaser of

⁸ Стаценко О.С. До питання особливостей набуття прав на нерухоме майно за набувальною давністю в Україні. *Правові та інституційні механізми забезпечення розвитку України в умовах європейської інтеграції: матеріали Міжнародної науково-практичної конференції* (м. Одеса, 18 травня 2018 р.). У 2-х т. Т. 2 // Відп. ред. Г.О. Ульянова. Одеса: Видавничий дім “Гельветика”, 2018. С. 527–529.

⁹ Суярко Т.Д. Набуття права власності на нерухоме майно за давністю володіння: загальна характеристика умов володіння та об'єкта. *Вісник господарського судочинства*. 2011. № 1. С. 79–83.

such a thing obviously assumes that it may have an owner, which precludes his good faith.”¹⁰ Secondly, the takeover of landless property is due to the provisions of the Central Committee of Ukraine, namely Art. 335, that is, it is legal that a priori precludes good faith in the sense of Part 1 of Art. 344 of the Civil Code of Ukraine.

Following the above approach to understanding the essence of the condition of the statute of limitations – good faith seizure of real estate, the application of the statute of limitations to a homeless real estate is considered possible only if it is alienated by the acquirer, who considers the alienator the owner of the real estate, and therefore, is a goodwill. 388 of the Central Committee of Ukraine. Some researchers of the Institute of Acquisition do not see problems for the application of the Institute of Acceptance to homeless real estate, which is caused by a different understanding of the content of the condition of good faith seizure of property.

There is also an approach to understanding the nature of the foregoing acquisition limitation, which provides for the possibility of applying this institution to landless real estate. For example, TD Suyarko states that: “the purchaser is conscientious, if at the time of taking possession of the real estate he had every reason to believe that the legal owner of the real estate is absent or if the owner has the property, then he has lost interest in this real estate”¹¹. A similar approach to understanding the essence of the condition of the statute of limitations on good faith seizure of real estate is also found in court practice. Thus, the lawful seizure of real estate (on the basis of a contract, as a result of the law) makes it impossible to comply with one of the basic conditions of prescription – the integrity of the possession, and therefore excludes the possibility of acquiring such real estate for ownership. Art. 344 of the Civil Code of Ukraine. The exception may be only the case of the use of the statute of limitations on the lawfully acquired real estate (on the basis of a contract with the owner), provided for in Part 3 of Art. 344 of the Civil Code of Ukraine.

Open ownership of property is the next condition of the statute of limitations, which is directly provided by the norm of Part 1 of Art. 344 of the Civil Code of Ukraine, while in the legal literature there is no unambiguous approach to the definition of this concept. Most of the definitions of “open ownership” existing in the scientific literature boil down to the fact that open ownership means owning property without hiding it from third parties, but

¹⁰ Хопта С.Ф. Набувальна давність у контексті правозастосовної практики. *Часопис цивільного і кримінального судочинства*. 2012. № 5 (8). С. 82–92.

¹¹ Суярко Т.Д. Набуття права власності на нерухоме майно за давністю володіння: загальна характеристика умов володіння та об'єкта. *Вісник господарського судочинства*. 2011. № 1. С. 79–83.

this behavior of the owner is different in each case. In civil science, an approach has been taken whereby open ownership is obvious to third parties, and the latter must be able to observe this possession, but this does not mean that the owner is obliged to specifically inform others about his possession¹²

Analyzing this definition, the question arises: “does open ownership of real estate imply an obligation on the bona fide purchaser to show his ownership so that it is obvious to all others? is it enough for a bona fide purchaser intentionally not to conceal his possession?” The content of the statute of limitations does not answer these questions. However, in our opinion, it is inappropriate to oblige a bona fide purchaser who owns real estate as his or her own to special measures aimed at ensuring open ownership of real estate, since such requirements are not imposed on the owner of the real estate. In this regard, it is apparent that open ownership only implies that the purchaser of the property does not conceal the fact of ownership from third parties and uses the real estate, as would normally be done by the owner¹³.

2. The issue of determining the period of limitation

The term is one of the most important terms of the statute of limitations, the observance of which, in conjunction with other legal conditions, is subject to clarification when deciding the issue of ownership of immovable property of an ancient owner. From the provisions of the civil legislation of Ukraine the dependence of determining the terms of the statute of limitations on the type of property and on the grounds for taking possession of this property is examined. The need to own real estate for 10 years, and movable property for 5 years to acquire ownership of real estate or movable property, provided for Part 1 of Art. 344 of the Central Committee of Ukraine.

When considering the definition of the statute of limitations, it becomes important to find out the order in which the period expires, in particular: the beginning of the period, the suspension and interruption of the term, as well as the moment and consequences of its expiration. A study of the beginning of the statute of limitations allows us to find out the order of the period of that period. It should be noted that in accordance with the generally defined rule for calculating the terms specified in the provisions of Art. 253 of the Civil Code of Ukraine, the period begins from the moment of occurrence of the event or the next day after the relevant date. From the provisions of Part 1 of Art. 344 of the Civil Code of Ukraine implies that the statute of limitations begins from the moment of taking possession of real estate.

¹² Науково-практичний коментар Цивільного кодексу України: у 2 т. / За ред. О.В. Дзери (кер. авт. кол.), Н.С. Кузнецової, В.В. Луця. 3-е вид., перероб. і доп. Київ: Юрінком Інтер, 2008. Т. I. 832 с.

¹³ Цивільний кодекс України: наук.-практ. комент.: у 2 ч. /за заг. ред. Я.М. Шевченко. Київ: Видав. Дім “Ін Юре”, 2004. Ч. I. 704 с.

However, the question arises: when does this moment arise in the case of the acquisition of real estate under the contract, since the moment of transfer of the real estate and the time of the conclusion of the contract may not coincide in time. In this case, we believe that the takeover of real estate occurs not earlier than the actual transfer of real estate to the acquirer. This conclusion is explained by the fact that only from the moment of the transfer of real estate, the acquirer acquires the status of the owner of real estate, which is alien, which in accordance with the provisions of Part 1 of Art. 397 of the Central Committee of Ukraine. It is noted that the legislator in Part 1 of Art. 344 of the Civil Code of Ukraine, the beginning of the course of the statute of limitations did not depend on the expiration of the limitation period. Such an order of expiration of the statute of limitations and the statute of limitations in accordance with Part 1 of Art. 344 of the Civil Code of Ukraine is conditioned by the need to protect the interests not only of the owner of the real estate, but also a conscientious purchaser who may not be aware of the illegality of the acquisition of real estate. In this case: “the protection of the interests of the conscientious purchaser is that the duration of the period of ownership of real estate is equal to the anticipated period of ownership of real estate to acquire ownership of this real estate, and not dependent on the beginning of the limitation period, as theoretically, the situation may arise when the statute of limitations will begin after the expiration of the foreseen in part 1 of Art. 344 of the Civil Code of Ukraine the term for acquisition of the right of ownership of immovable property by the statute of limitations”¹⁴. In this case, the period of limitation period will not begin, and if the period of limitation period still begins, this period will not be able to continue in case of termination of limitation period.

Given this, it is theoretically possible that a real estate owner may never know who his real estate is, and therefore will not be able to exercise his right to claim it (in other words, the statute of limitations will not begin), and therefore, the grounds for starting there will be no current limitation period. Under such conditions, a conscientious acquirer, having held the real estate for a long time, will not be able to acquire the ownership of this real estate for a period of time. The practical existence of this situation would completely offset the value of the statute of limitations and would increase the amount of immovable property that would remain out of civil circulation. The conclusion that it is inappropriate to establish the interdependence of the statute of limitations and the statute of limitations is stipulated by the legally prescribed possibility of renewing the statute of limitations. Due to this, there may be a

¹⁴ Вахонсва Т. Набувальна давність як правовий інститут цивільного права: історія та сучасність. *Підприємництво, господарство і право*. 2004. № 6. С. 36–41.

situation where the statute of limitations provided for by the civil law of Ukraine has expired, but a person cannot acquire ownership of real estate due to the statute of limitations due to the renewal of the limitation period. In the event of a dependency on the beginning of the statute of limitations on the expiration of the statute of limitations, the unscrupulous owner could be in a hurry, knowing that at any time he would be able to exercise the right to claim his real estate within the limitation period. In such circumstances, the statute of limitations may not begin and the possession of a bona fide acquirer of immovable property within the stipulated period may not have the effect of acquiring the ownership of immovable property by prescription.

Thus, the current period of acquisition of limitation in Part 1 of Art. 344 of the Civil Code of Ukraine should not be dependent on the commencement or termination of the limitation period. At the same time, we consider that the Central Committee of Ukraine should contain separate rules on the order of validity of the statute of limitations in order to avoid in practice unjustified references to the need to be guided by the statutory procedure of the statute of limitations¹⁵.

Continuity of possession of the property during the period of acquisition limitation is provided by the possibility of the person claiming the presumptive possession of the real estate to attach to the time of his possession of the real estate even the time during which the person – the heir (part 2 of Article 344 of the Civil Code of Ukraine) owned this property. The content of the said norm indicates that the legislator has provided an opportunity to attach the term of prescription under universal succession. This is confirmed by the position of most domestic scientists in this regard¹⁶. However, we consider the drawback of the legislative wording of Part 2 of Art. 344 of the Civil Code of Ukraine is that the lexical interpretation of this rule gives the impression that the accession of the term of possession is possible only by inheritance. The content of other provisions of the Civil Code of Ukraine does not indicate the identification of definitions of “term” and “term” (for example, Article 530 of the Civil Code of Ukraine). In any case, to prevent a double understanding of the norm of Part 2 of Art. 344 of the Civil Code of Ukraine to the legislator in the text of the said article it would be necessary to specify the type of succession, which would enable the person –

¹⁵ Стаценко О.С. До питання особливостей набуття прав на нерухоме майно за набувальною давністю в Україні. *Правові та інституційні механізми забезпечення розвитку України в умовах європейської інтеграції: матеріали Міжнародної науково-практичної конференції* (м. Одеса, 18 травня 2018 р.). У 2-х т. Т. 2 // відп. ред. Г.О. Ульянова. Одеса: Видавничий дім “Гельветика”, 2018. С. 527–529.

¹⁶ Луспенник Д. Спори про набувальну давність: проблеми теорії і судової практики. *Юридичний журнал*. 2006. № 5 (47). С. 114–118.

heir (successor) to attach to the term of his possession of real estate, also the time during which the real estate was owned by the heir¹⁷.

The expediency of the legislative securing of the possibility of accession as a result of the singular succession of possession of a bona fide purchaser of property under Part 1 of Art. 344 of the Civil Code of Ukraine is stipulated by the fact that during the possession of such owner may never know about the illegality of acquisition of real estate and consider himself the owner. In addition, a conscientious acquirer, considering himself the owner of real estate, can alienate it to another person, and such a transfer of real estate can occur many times. Due to this, for a long time there may not be a person who owns the real estate continuously for the period necessary for its acquisition into the property after the statute of limitations.

Thus, in the case of alienation of such real estate, the legislator must give the person who has taken possession of the real estate the opportunity to acquire ownership of this real estate, provided that the requirements of Part 1 of Art. 344 of the Civil Code of Ukraine, however, with the adherence to its term of ownership of real estate, the term during which the real estate was owned by its predecessor, is also an ancient owner. It should be noted that when implementing the provisions of Part 2 of Art. 344 of the Civil Code of Ukraine regarding succession, there may be a number of questions about joining the statute of limitations in case of inheritance.

An important issue that needs to be analyzed in the context of the study of the order of the limitation period is to find out the reasons for its suspension. It should be noted that the norms of the Central Committee of Ukraine on the limitation period do not regulate this issue. In civil science, there are supporters of the legislative fixation of the relationship between the statute of limitations and the statute of limitations regarding the suspension of their term. In particular, V.P. Makoy acknowledges that the regulation in foreign civil law is quite successful: "Yes, the scientist draws attention to the German civil law, where the issue of the statute of limitations in relation to the limitation period is reduced to the existence of common grounds for stopping the term"¹⁸. Instead, we consider that within the limits of the Central Committee of Ukraine on the statute of limitations, the stated grounds for stopping the period of the statute of limitations are subject to legislative fixation. It is believed that the suspension of the statute of limitations, should occur as a result of filing a claim for the claim of property from the possession of the ancient owner.

¹⁷ Яворська О.С. Правове регулювання відносин власності за цивільним законодавством України: навч. посіб. Київ: Атіка, 2008. 332 с.

¹⁸ Маковій В.П. Набувальна давність у цивільному праві: дис. ... канд. юрид. наук. Харків, 2007. 224 с.

It should be noted that according to the general concept and in our opinion the possession of the property is interrupted by the recognition of the ownership of the real estate in another person and the transfer of the real property to the owner, leaving the intention to own the property in order to acquire the property right for the property by way of renouncing the ownership, alienation to other persons, loss of ownership, claim by the rightful owner in due course of the right to property. The interrupted period of antiquity shall be restored in full in case of refusal of the rightful owner in a claim for the right to property, in case of return of the lost possession within one year for real estate.

However, the continuity of possession “for prescription” does not mean that the property must be permanently in the actual possession of the owner. It may be temporarily withdrawn from its possession for the same reasons on which it may be withdrawn from the owner’s property (for example, in a lease), without any consequences. In the event of an interruption of the statute of limitations, the elapsed time before the interruption loses value for the calculation of the statute of limitations. After the break, the period begins again. The necessity to protect the rights of the real estate owner, who can file a specific claim (in accordance with the provisions of Part 2 of Article 267 of the Civil Code of Ukraine, the claim is accepted by the court regardless of the expiry of the limitation period), makes it necessary to suspend the period of limitation.

The claim to seize real estate from someone else’s “illegal” possession, in modern civilistics is considered as the basis for interruption of the statute of limitations. However, the above violates the rights of the ancient owner and does not correspond to the interests of the civil turnover. If, in practice, a court has rejected a claim for the seizure of immovable property from another’s unlawful possession, it is important that the statute of limitations does not begin to resurface but continue. This is even more appropriate given the possibility of filing such a lawsuit repeatedly during antiquity. In such circumstances, the very suspension of the statute of limitations will ensure the balance of interests of the owner and the ancient owner. In addition, in practice, there may be circumstances of abuse of the right to file a claim.

Regarding the property of an incapacitated person, we consider it inappropriate to legislate in Ukraine the suspension of the period of acquisition limitation period for the acquisition by the ancient owner of the property of such property. This can be explained by the provision of custody of incapacitated persons for the protection of their rights and interests, both property and personal property. In accordance with the provisions of Art. 72, 74 of the Civil Code of Ukraine, custody of incapacitated persons is established for the preservation and use of immovable property belonging to

the incapacitated person in the interests of the latter. In addition, incapacitated, the person remains for a long time or forever, and therefore suspension of the statute of limitations will not give the opportunity to acquire ownership of the immovable property of the specified person for the statute of limitations. It is considered that the above may not correspond to the purpose of the statute of limitations for the return of immovable property to civil circulation.

Consideration should be given to investigating the legal effects of the statute of limitations. From the content of Part 4 of Art. 344 of the Civil Code of Ukraine the right of ownership by the prescription for immovable property is acquired by court decision. It follows from the content of the said norm that the existence of a court decision for the acquisition of immovable property by prescription is an additional condition to those provided for in Part 1 of Art. 344 of the Civil Code of Ukraine. At the same time, in order to comply with this condition for the acquisition of real estate property, the legislator considers the necessary state registration, which is clearly stipulated in the provisions of para. 3 h. 1 t. 344 of the Civil Code of Ukraine. In the case of misconception about the ownership of real estate, the specified acquirer of the right to acquire immovable property, there is no reason to appeal to the court for “legalization” of their ownership of immovable property by prescription. At the same time, it is emphasized that the return of real estate to its owner or the acquisition of ownership of immovable property by the statute of limitations becomes impossible.

Therefore, in view of the above, relatively bona fide purchaser of title to immovable property under the statute of limitations in the sense of Part 1 of Art. 344 of the Civil Code of Ukraine, in the case of receiving information during the possession of real estate, the acquirer of the fact that he is not the owner of real estate, and also as a result of judicial appeal against his possession of real estate, is considered justified by the requirement of Part 4 of Art. 344 of the Civil Code of Ukraine¹⁹. Despite the presence in Part 4 of Art. 344 of the Civil Code of Ukraine on the legislative requirement on the acquisition of ownership of certain types of property on the basis of the statute of limitations by court decision, procedural legislation does not determine in what order the court should decide the issue of recognition of ownership of such property by the statute of limitations. In practice, there may be a situation in which at the time of expiration of the statute of limitations and the need to bring a

¹⁹ Стаценко О.С. До питання особливостей набуття прав на нерухоме майно за набувальною давністю в Україні. *Правові та інституційні механізми забезпечення розвитку України в умовах європейської інтеграції: матеріали Міжнародної науково-практичної конференції* (м. Одеса, 18 травня 2018 р.). У 2-х т. Т. 2 // відп. ред. Г.О. Ульянова. Одеса: Видавничий дім “Гельветика”, 2018. С. 527–529.

conscientious purchaser to court as a result of Part 4 of Art. 344 of the Civil Code of Ukraine will expire limitation period for the owner of real estate.

In the case of the decision on the acquisition of the right of ownership of immovable property in the limitation period in favor of the ancient owner, the court in the decision should clearly determine the moment when the right of ownership arises on the basis of establishing the moment from which the period of acquisition limitation began, which must be clearly stipulated by the procedural legislation. This will help to avoid problems with mandatory state registration of ownership of real estate, in practice. According to paragraph 3 of Part 1 of Art. 344 of the Civil Code of Ukraine: “by the statute of limitations, the right of ownership of real estate subject to state registration arises from the moment of state registration”. Based on the analysis of the provisions of Art. 344 of the Civil Code of Ukraine implies that for the acquisition of ownership of immovable property by the statute of limitations, the statutory requirement for state registration, as well as the requirement for a court decision, is an additional, but obligatory condition to those provided in part 1 of Art. 344 of the Civil Code of Ukraine. The obligation of state registration for the emergence of ownership of immovable property by prescription is also confirmed by the imperative nature of the provision of Art. 3 of the Law of Ukraine “On State Registration of Property Rights to Real Estate and their Burdens”,²⁰ according to which the right of ownership of real estate subject to state registration arises from the moment of such registration.

A similar situation is also observed in the content of other provisions of the Central Committee of Ukraine, in particular in para. 3 h. 2 tbsp. 331 and Part 2 of Art. 1299, according to which ownership of newly created and hereditary immovable property arises from the moment of state registration. At the same time, we question the expediency of granting the state registration of legal value for the acquisition of the right of ownership of real estate according to the statute of limitations, which is consistent with a number of provisions of the legislation of Ukraine. It is believed that state registration of real estate rights in Ukraine should only be of a fixed nature. The essence and purpose of state registration of the right of ownership of real estate, in this case, will be reduced to official recognition by the state, as well as confirmation and accounting of the facts of acquisition of rights to real estate, or changes or termination of these rights.

Thus, for the acquisition of ownership of immovable property by the statute of limitations must be given legal value to the court’s decision on the

²⁰ Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень: Закон України від 01.07.2004 р. № 1952-IV. *Відомості Верховної Ради України*. 2004. № 51. Ст. 553.

recognition of ownership, which is made on the basis of establishing the fact of possession of real estate with observance of statutory requirements. In the case of the consequences of consideration of such a category of cases, the court in the decision should clearly state the moment when the right of ownership of immovable property arises, which is determined on the basis of the court's establishment of the moment from which the statute of limitations began. State registration of the right to immovable property should not have legal value for the acquisition of ownership right after the prescription, but should act only by the act of its fixing, confirmation and certification.

According to Part 3 of Art. 344 of the Civil Code of Ukraine: "if a person has taken possession of real estate on the basis of an agreement with the owner of this real estate who, after the expiration of the contract, has not made a claim for the return of his real estate, then that person acquires the right of ownership of the real estate upon acquisition expiration fifteen years of possession of real estate since the expiration of the statute of limitations"²¹. The legislative structure of Part 3 of Art. 344 of the Civil Code of Ukraine has the characteristics of a separate variety of statute of limitations, as it is characterized by a different circle of subjects, legal conditions, including a different order of the period of prescription.

For the acquisition of ownership of immovable property by acquisition prescription is required, in accordance with Part 1 of Art. 344 of the Central Committee of Ukraine, good faith seizure of this real estate. Instead, the analysis of the norm of Part 3 of Art. 344 of the Civil Code of Ukraine implies that it does not contain any condition for the integrity of the seizure of real estate, since the seizure of real estate in this case occurs lawfully on the basis of an agreement with the owner of the real estate. With the expiry of the contract, the legal basis for owning the real estate disappears and the owner begins to own it illegally, while remaining, however, its legal acquirer. In this regard, the buyer of real estate in Part 3 of Art. 344 of the Civil Code of Ukraine is not subject to the statute of limitations in the sense of Part 1 of Art. 344 of the Civil Code of Ukraine, therefore, the requirement for the integrity of the seizure of real estate can not be made to him. However, Part 3 of Art. 344 of the Civil Code of Ukraine does not contain requirements for openness and continuity of ownership of real estate. Such requirements are considered expedient to be imposed on the subject of acquisition limitation in part 3 of Art. 344 of the Civil Code of Ukraine. Open ownership implies that the purchaser of the real estate does not conceal the fact of possession from third parties and uses the real estate as its owner. The specified condition of

²¹ Цивільний кодекс України: Закон України від 16.01.2003 р. *Відомості Верховної Ради України*. 2003. № 40–44. Ст. 356.

the statute of limitations does not determine the integrity of the purchaser, so it may concern the subject of the statute of limitations in part 3 of Art. 344 of the Civil Code of Ukraine, which is the acquirer of immovable property under a contract whose term has expired.

The requirement for continuity of the ancient possession must apply to the ancient owner under Part 3 of Art. 344 of the Civil Code, which follows from the essence of the institution of the statute of limitations, characterized by the need for continuous and long-term ownership of real estate to acquire ownership of this immovable property by prescription. With regard to the condition of the statute of limitations on the possession of real estate as its own, which exists doctrinal and in practice refers to the subjects of the statute of limitations in part 1 of Art. 344 of the Civil Code of Ukraine, its legislative consolidation in part 3 of Art. 344 of the CC of Ukraine is considered inappropriate. This is because the subject of the statute of limitations in Part 3 of Art. 344 of the Central Committee of Ukraine, unlike the conscientious purchaser, from the very beginning owns real estate on behalf of someone else's, that is, not as his own.

Investigating the issues of the terms of the statute of limitations for Part 3 of Art. 344 of the Civil Code of Ukraine, it should be noted that the specified norm enshrines a longer – 15-year period of statute of limitations for the acquisition of real estate property, compared to the 10-year term under part 1 of this article. You should also pay attention to the legislative formulation of the norm of Part 3 of Art. 344 of the Civil Code of Ukraine, where it is stated that a person acquires the right of ownership over immovable property fifteen years after the statute of limitations has expired. This norm, defining the period of the statute of limitations, at the same time establishes a special order of its course, which is that the statute of limitations begins to emerge only after the statute of limitations has expired, unlike the period of the statute of limitations for part 1 of Art. 344 of the Civil Code, the course of which is not tied to the expiration of the limitation period.

A special procedure for the period of acquisition of limitation in Part 3 of Art. 344 of the Civil Code of Ukraine is conditioned by the fact that “from the moment of termination of the contract the owner of the real estate is obliged to return the real estate at the request of its owner, to whom the legislation gives a clear term for making such a request, thereby stimulating him to take active actions”²². In the event that the owner of the real estate has shown indifference or negligence, or for other reasons did not do so within the limitation period, the owner will have the grounds stipulated by law not to return the real estate to him and begin to own it in the order of limitation.

²² Цивільний кодекс України: Закон України від 16.01.2003 р. *Відомості Верховної Ради України*. 2003. № 40–44. Ст. 356.

It should be noted that in the context of the terms of acquisition of ownership of immovable property by the statute of limitations, due to Part 3 of Art. 344 of the Civil Code of Ukraine a person for acquisition of the right of ownership of real estate by acquisition prescription must possess this real estate for a much longer period than the subject of acquisition prescription in part 1 of Art. 344 of the Civil Code of Ukraine. In total, the period of ownership of real estate should be at least 18 years. Based on the analysis of the provisions of the civil legislation of Ukraine, it is possible to draw a preliminary conclusion about the impossibility of application, in combination with the norm of Part 3 of Art. 344, provisions for contracts. As an example, the provisions of Art. 764 of the Civil Code of Ukraine, which stipulates that in the event of the tenant continuing to use the property under the lease agreement, the absence of claims by the lessor, within one month after the expiration of the lease agreement, the said contract will be considered to be renewed for the same period as stipulated in the contract.

Analyzing the provisions of the contract of property management, it should be noted that after the expiration of the contract, in the absence of statements by the parties to the contract for its amendment or termination, the contract continues for the same term and the same conditions as specified in the contract (h. 2 Article 1036 of the Civil Code of Ukraine). It traces the preservation of the legal basis for the possession of real estate, which enables the real estate manager to acquire ownership of this real estate in accordance with the norms of Part 3 of Art. 344 of the Civil Code of Ukraine.

CONCLUSIONS

The expiration of the contract, provided that the owner of the real estate does not make a claim for the return of the real estate, should be considered as one of the legal facts that precedes the beginning of the period of acquisition limitation in accordance with the norm of Part 3 of Art. 344 of the Civil Code of Ukraine. However, it should be noted that, in accordance with the provisions of the civil law of Ukraine, the expiration of the contract is not the only reason for termination of the contract and obligations for it, as a result of which the property owner has the right to demand his return. The same consequences occur in the event of termination and termination of the contract. In view of the above, it is considered advisable to replace the provisions of Part 3 of Art. 344 of the Central Committee of Ukraine for “extraordinary” prescription. A similar statute of limitations exists in most jurisdictions of foreign countries. It should be noted that, in the experience of foreign states, the use of “extraordinary” prescription may fully fulfill the legislative purpose of Part 3 of Art. 344 of the Civil Code of Ukraine in order to eliminate the

gaps in which immovable property may remain out of civil circulation forever, in cases where the ancient possession of real estate does not fall under the provisions of Part 1 of Art. 344 of the Civil Code of Ukraine.

Taking into account the peculiarities of legislative regulation of the statute of limitations in the Central Committee of Ukraine and foreign legislative experience, it is advisable to extend extraordinary statute of limitations in Ukraine to the cases of: 1) legal possession of property due to Part 3 of Art. 335, h. 3 Art. 344, Part 3, Art. 1157 of the Central Committee of Ukraine; 2) legal possession of real estate as its owner in the absence of proper registration of the ownership right and title documents on it; 3) unlawful misappropriation of real estate. In this case, the extraordinary acquisitive prescription will be characterized by the absence of a condition for bona fide seizure (possession) of real estate and longer, compared to Part 1 of Art. 344 of the Civil Code of Ukraine, the term of possession, necessary for the acquisition of real estate in the property by the statute of limitations.

Given the disadvantages of Part 3 of Art. 344 of the Civil Code of Ukraine in terms of establishing the procedure for the term of the statute of limitations, the term of the “extraordinary” statute of limitations must occur in parallel with the statute of limitations in accordance with the provisions of Part 1 of Art. 344 of the Civil Code of Ukraine. In this case, the conditions for which the necessity of observance of which does not depend on the integrity or bad faith of the purchaser of immovable property, in accordance with Part 1 of Article 1, must be common to the statute of limitations and “extraordinary” statute of limitations. 344 of the Civil Code of Ukraine. Such conditions, as evidenced by the above comparative analysis of the substantive content of h. 1, 3 Art. 344 of the Civil Code of Ukraine, is the openness and continuity of the ancient possession of real estate, the observance of which is obligatory for the acquisition of ownership of real estate by acquisition, including “extraordinary” prescription.

SUMMARY

Therefore, the modern development of economic relations attests to the importance of the statute of limitations as a legal mechanism for ensuring the efficiency of civil turnover, an integral part of which is real estate. At the same time, the Institute of Acquisition as the basis for the acquisition of ownership of real estate is characterized by the imperfection of legal regulation of relations related to antiquity, which complicates or makes it impossible to acquire ownership of immovable property by prescription. This points to the need to improve the legal regulation of prescription in Ukraine, taking into account, on the way of Ukraine to European integration, the legislative experience of EU countries.

Together with the above, attention is drawn to the need to distinguish between such legal categories as “grounds” and “conditions” of acquiring ownership of real estate. The main reason for acquiring the ownership of immovable property by the statute of limitations is a court decision, whereas the conditions of acquisition are certain circumstances, the existence of which may be the basis for the acquisition of ownership of the immovable property.

On the basis of the conducted research it is concluded that there is a need to distinguish between such legal categories as “method” and “grounds” of acquisition of ownership of immovable property by prescription, since way is a tool of realization of the will of the acquirer of property right, including the right to other things, and the grounds are a legal fact that leads to legal consequences in the form of acquisition of ownership of property, in particular, the right to immovable property for a period of time. Attention is drawn to the fact that the acquisition of ownership of real estate is carried out by means of primitive and derivative methods that differ from the moment of acquisition of ownership. At the same time, the moment of acquiring the ownership of real estate is traditionally regarded as a derivative way of acquiring this right, but it also occurs in the original ways. The latter include, in particular, the acquisition of the right to immovable property by prescription.

The obligatory condition for acquiring the right of ownership of immovable property under the statute of limitations is those circumstances in which the immovable property claimed by the person acquiring the property must have the status of a landless property and which cannot be attributed to the property acquired in accordance with Art. 330–333 and Art. 336–339 and Art. 343 of the Central Committee of Ukraine. The most important conditions of the statute of limitations, which must be applied at the same time, are: good faith ownership of property; open ownership of property; continuity of ownership of property; possession of property within the statutory period.

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