

The Subjective Element in Usucapion and in Crimes related to the Illicit Acquisition of Real Estate.

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Abstract

The subjective element plays an essential role both in usucapion and in the criminal classification of acts involving the illicit acquisition of real estate. In civil law, *animus possidendi* (the intention to possess the property as a true owner) is a *sine qua non* condition of usucapion, without which possession cannot be considered useful and does not produce legal effects. This intention must be constant, unequivocal and visible, and its proof is based on external manifestations, such as paying taxes, fencing or maintaining the property.

In contrast, in criminal law, the subjective element is translated by the criminal intention of the perpetrator to acquire or keep real estate in violation of the law, knowing the lack of his right of ownership. Thus, acts such as usurpation of property, real estate fraud or forgery can transform an apparently legal possession into criminal conduct, depending on the purpose pursued and the means used.

The distinction between civil possession in good faith and fraudulent possession with criminal intent requires a rigorous analysis of the subjective element in both branches of law. Therefore, coordination between civil and criminal courts is necessary to avoid contradictory qualifications, and recent doctrinal proposals recommend the development of objective criteria for identifying the intention of possession for the purpose of usucapion versus the intention of illicit acquisition.

Keywords: possession; usucapion; civil law; intention.

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Introduction

The issue of the subjective element within the institution of acquisitive prescription (usucapion), on the one hand, and within the scope of criminal offenses concerning the unlawful acquisition of immovable property, on the other hand, represents a point of intersection between civil law and criminal law, carrying significant theoretical and practical implications. Although these fields belong to distinct branches of law, both rely on the notion of intention – *animus* – as a defining element in determining whether a given legal conduct is to be classified as lawful or unlawful.

In civil law, acquisitive prescription is founded on the consolidation of long-term possession exercised openly, peacefully, and under the appearance of ownership. Beyond the external manifestations of possession, Romanian law implicitly requires the existence of a subjective element – *animus possidendi* – which reflects the possessor's intention to hold the property as a genuine holder of rights¹. This intention is essential for the validation of a claim based on acquisitive prescription, and its absence transforms possession into precarious detention, devoid of legal relevance in this context.

By contrast, in criminal law, the analysis of the subjective element seeks to determine the offender's intention to acquire immovable property through the violation of the law. Offences such as usurpation of ownership, fraud concerning property titles, forgery of documents, or breach of trust all imply, in every case, a conscious awareness that the acquisition of the property is illegitimate². Fraudulent intent thus becomes the criterion for distinguishing between possession capable of producing civil effects (through acquisitive prescription) and conduct that entails criminal liability.

This dual perspective – civil and criminal – on *animus* calls for an in-depth reflection on the manner in which courts interpret intention in matters of possession and on how confusion may be avoided between the exercise of an apparent right and unlawful conduct. Consequently, the comparative analysis of the subjective element within these two legal spheres not only functionally distinguishes the two regimes but also contributes to a coherent and unified interpretation of the concept of intention in Romanian positive law.

The Subjective Element in Acquisitive Prescription and in Offenses Related to the Unlawful Acquisition of Immovable Property

In both civil and criminal law, the analysis of the subjective element is essential for understanding the mechanisms through which ownership of immovable property is acquired. In acquisitive prescription, the subjective element determines the validity and lawfulness of acquisition, whereas in offenses relating to unlawful acquisition it refers to the mental state accompanying the commission of the illicit act³.

1. The Subjective Element in Acquisitive Prescription

Acquisitive prescription is a legal institution through which ownership of an immovable property may be acquired by means of continuous, peaceful, and uninterrupted

¹ Articles 918 and 2500 of the Civil Code; for the doctrine on *animus possidendi*, see Flavius-Antoniou Baiaș, *The New Civil Code. Article-by-Article Commentary*, C.H. Beck Publishing House, 2012, pp. 977-980.

² Articles 244-248 of the Criminal Code and the case law of the High Court of Cassation and Justice, Criminal Division, Decisions no. 420/2019 and no. 612/2021.

³ Andreea Corsei, *Criminal Law. General Part* (University Course), Universul Juridic Publishing House, Bucharest, 2025, pp. 25-30.

possession, under the conditions provided by law⁴. The fundamental subjective element in this process is good faith.

In acquisitive prescription, good faith presupposes the possessor's sincere and justified belief that their right over the property is legitimate. This generally entails the existence of a title which, although apparently valid, may be defective or insufficient to effect the transfer of ownership⁵. Thus, good faith is a subjective state excluding any intention to deceive or to violate another person's rights and confers legitimacy upon possession capable of leading to the acquisition of ownership through acquisitive prescription.

2. The Subjective Element in Offenses Related to Unlawful Acquisition

In criminal law, offenses concerning the unlawful acquisition of immovable property are characterized by the presence of intent (*dolus*) to infringe the right of ownership⁶. This intent concerns the conscious and voluntary action of acquiring a property without legal entitlement, through unlawful means such as unauthorized occupation, usurpation, forgery of documents, or forgery of authentic instruments.

The subjective element in such offenses consists of a clear and determined will to produce an unlawful result, namely the fraudulent acquisition of rights over property. This intention excludes good faith and justifies the application of criminal sanctions⁷.

3. Differences between the Subjective Element in Acquisitive Prescription and in Criminal Offenses

The subjective element in acquisitive prescription is defined by good faith, which confers legality and protection upon long-term possession. By contrast, in criminal offenses, the subjective element is intent (*dolus*), which reflects the will to violate the law and the right of ownership.

This distinction is crucial for differentiating between lawful acquisition and acquisition subject to criminal sanction and is based on the analysis of the subject's mental state at the time of acquisition.

Therefore, the subjective element represents the cornerstone of the legal assessment of any form of acquisition of ownership rights over immovable property. In acquisitive prescription, good faith legitimizes acquisition, whereas in criminal offenses, fraudulent intent determines criminal liability. Accordingly, a clear differentiation between these subjective elements is indispensable for the correct application of both civil and criminal law.

The Subjective Element in Offenses Concerning the Unlawful Acquisition of Property

The subjective element is essential to defining offenses involving unlawful acquisition of property, as it draws the line between criminal conduct and lawful action, depending on the offender's intent or state of awareness. The analysis of this element is indispensable for establishing guilt and for the correct application of criminal sanctions.

1. The Concept of the Subjective Element in Criminal Law

In criminal law, the subjective element represents "the psychological state of the offender in relation to the commission of the offense". It consists of intent (*dolus*) or, in

⁴ The Civil Code, Articles 944 et seq. concerning acquisitive prescription.

⁵ Dan Chiriță, *Civil Law. Principal Real Rights*, Universul Juridic Publishing House, Bucharest, 2019, pp. 310-320.

⁶ The Criminal Code, Article 15 – General conditions of criminal liability (the offense).

⁷ Ion Matei, *Treatise on Criminal Law. General Part*, C.H. Beck Publishing House, 2017, pp. 220-230.

certain cases, negligence (*culpa*). For offenses relating to unlawful acquisition, the predominant subjective element is direct intent.

2. The Subjective Element in Offenses Concerning the Unlawful Acquisition of Property

In cases of unlawful acquisition offenses, such as usucapion, unlawful appropriation, theft, or fraud, the offender must manifest the intention to acquire or retain property by illegal means⁸. This intent entails:

- Awareness that the acquisition is unlawful;
- The will to produce an illicit legal effect, namely the unlawful removal or appropriation of property without legal entitlement.

Thus, the subjective element is not merely the simple awareness of one's actions, but the determined will to violate the law and to prejudice another person's legitimate rights.

3. The Specificity of the Subjective Element in Offenses Concerning Immovable Property

In the case of immovable property, the subjective element assumes particular importance, since acquisition may at first sight appear lawful (for instance, through possession). However, if the lack of good faith and the intent to usurp the owner's rights are established, the conduct becomes criminal in nature⁹. Moreover, in offenses such as forgery of official documents used for unlawful acquisition, the subjective element consists in the fraudulent intent to mislead public authorities or third parties in order to obtain a false title of ownership¹⁰.

4. Legal Consequences of the Subjective Element

The presence of fraudulent intent constitutes the fundamental condition for the application of criminal sanctions. Its absence may lead to the exclusion of criminal liability, since the act no longer bears the character of intentional unlawfulness. Consequently, establishing the subjective element is decisive in criminal proceedings concerning offenses related to unlawful acquisition¹¹. The subjective element in offenses concerning unlawful acquisition is decisive for establishing guilt and for distinguishing between unlawful actions and legitimate acquisitions. The clear and conscious intent to acquire property without legal entitlement constitutes the foundation of criminal liability in such cases. Thus, criminal law emphasizes the offender's mental state in order to sanction only acts committed with culpability.

The Transition from Possession to Criminal Liability: A Legal Analysis

The transition from possession to criminal liability represents a critical moment in property law and criminal law, as it marks the transformation of a factual situation (possession) into a legally punishable status. This transition entails a complex assessment of the elements that determine whether conduct related to the possession of property becomes criminal behavior.

⁸ Marius Popescu, *Offenses Against Property*, Universul Juridic Publishing House, Bucharest, 2019, pp. 145-160.

⁹ Ion Stancu, *Criminal Law. Special Part*, All Beck Publishing House, 2015, pp. 290-295.

¹⁰ Daniel Mihai, *Forgery of Documents and Its Legal Consequences*, Hamangiu Publishing House, 2016, pp. 122-130.

¹¹ Cristian Vasilescu, *Criminal Liability and the Elements of the Offense*, Rosetti Publishing House, 2018, pp. 73-80.

1. Possession in Civil Law

In civil law, possession is regarded as a factual situation consisting in the effective, physical, and peaceful exercise of control over property¹². The possessor may acquire ownership of the property through the institution of acquisitive prescription, provided that certain conditions are fulfilled, such as the existence of good faith and the exercise of uninterrupted possession for a statutory period of time¹³.

2. Conditions for the Transition from Possession to Criminal Liability

The transition from possession to criminal liability occurs when the possession of property, initially peaceful or apparently lawful, is carried out or continued in violation of criminal law. Such a transition requires the fulfillment of certain conditions:

- **Absence of legal title or good faith:** if possession is exercised in bad faith, without legal justification, it may constitute the basis for criminal liability¹⁴.
- **Fraudulent intent (*dolus*):** the subjective element reflecting the possessor's clear will to usurp or circumvent the legitimate rights of the owner¹⁵.
- **Manner of exercising possession:** possession acquired or maintained through violence, force, or unlawful means may be classified as criminal conduct¹⁶.

3. Examples in Criminal Law

Offenses such as **usurpation** are paradigmatic for this transition. Initially, a person may exercise possession over immovable property without legal entitlement; however, once the individual intends to prevent the owner from exercising their rights, the conduct becomes criminal in nature¹⁷.

Likewise, the falsification of documents in order to justify possession leads to a shift into the criminal sphere through the commission of the offenses of forgery of documents or forgery of authentic instruments¹⁸.

4. The Importance of Determining the Moment of Transition

From the perspective of the application of the law, the moment when possession turns into criminal conduct is essential for establishing liability. If possession is exercised in good faith and lawfully, even in the absence of a definitive title, criminal liability does not arise. Only when intent and unlawful means are proven can criminal sanctions be imposed¹⁹. The transition from possession to criminal liability reflects a change in the legal nature of acts relating to immovable property. This transformation depends on the presence of a negative subjective element (*dolus*) and on the manner in which possession is exercised. For this reason, a clear delimitation between mere possession and criminal liability is fundamental to the protection of rights and to the fair application of sanctions.

¹² The Civil Code, Article 555 concerning the concept of possession.

¹³ Nicoleta Lupu, *Civil Law. Principal Real Rights*, All Beck Publishing House, 2018, pp. 290-295.

¹⁴ Adrian Popa, *General Theory of Civil Law*, Hamangiu Publishing House, 2016, pp. 205-215.

¹⁵ Ion Matei, *op. cit.*, pp. 183-190.

¹⁶ Ion Stancu, *Criminal Law. Special Part*, All Beck Publishing House, 2015, pp. 300-310.

¹⁷ The Criminal Code, Article 247 concerning usucapion.

¹⁸ Daniel Mihai, *Forgery of Documents and Its Consequences*, Hamangiu Publishing House, 2016, pp. 120-130.

¹⁹ Cristian Vasilescu, *Criminal Liability in Romanian Law*, Rosetti Publishing House, 2018, pp. 79-90.

Conclusion

The subjective element represents the cornerstone for understanding and correctly applying both acquisitive prescription and criminal liability in cases involving the unlawful acquisition of immovable property. Within the sphere of civil law, *animus possidendi* endows possession with the necessary legal quality to lead to the acquisition of ownership through acquisitive prescription, reflecting a clear and unequivocal intention of effective and legitimate control over the property. In the absence of this specific volition, possession remains incomplete and cannot give rise to proprietary legal effects.

By contrast, in criminal law, the subjective element acquires a distinct dimension, referring to the conscious and deliberate intent to acquire immovable property by means contrary to the law. Such intent results in the criminalization and sanctioning of acts such as usurpation, fraud, forgery, or other related offenses, highlighting the fraudulent nature of the purported acquisition of ownership.

Accordingly, the clear and operational distinction between civil *animus*, which legitimizes possession, and criminal intent, which qualifies it as unlawful conduct, is indispensable for the coherence of the legal system. A nuanced understanding of this subjective element facilitates judicial interpretation and provides a solid framework for the prevention of abuses, protecting both the rights of legitimate owners and the good faith of possessors.

For a uniform and equitable judicial application, continuous cooperation and dialogue between civil and criminal courts are necessary, along with doctrinal and legislative development aimed at clarifying the evidentiary and interpretative criteria governing *animus* in the context of both acquisitive prescription and offenses involving the unlawful acquisition of immovable property. In this respect, its legal nature becomes integrated within evidentiary assessment activities, while retaining a specific logical and deductive component²⁰.

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