

Acquisitive Prescription of Land Plots in Ukraine: procedure & preparation

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Pursuant to Ukrainian legislation, the acquisitive prescription of land plots is the receipt by citizens of the right to a land plot for prescription of use. Taking into account that this institute is a novel in Ukrainian Law, not enough research has been applied to its evaluation and study. Under the article 119 of the Land Code of Ukraine, the requirements on receipt of a plot of land pursuant to the acquisitive prescription include the bona fide, openness, uninterrupted use of a land plot by a citizen for 15 years and absence of documents confirming the right of person to such a land plot. It is important that article 119 shall be applied to individuals only. This means citizens of Ukraine because the term ‘citizen’ defines the connection of an individual with the citizenship of a certain country. Thus, foreigners and persons without citizenship cannot receive a land plot in Ukraine under acquisitive prescription and neither can all legal entities.

However, pursuant to article 344 of the Civil Code of Ukraine, a person shall receive such a right in the event of bona fide occupation of a strange property for 10 years. According to a statement by Dr. S. Grinko (T. Shevchenko Kiev National University), the Civil Code of Ukraine provides a more successful article regulating acquisitive prescription, especially the phrase ‘person’ in comparison with phrase ‘citizen’ seems more applicable to the current Ukrainian situation.

Let us analyze the requirements of receiving a land plot pursuant to an acquisitive prescription:

1. *Bona fide* – such requirement assumes the payment of a land tax, filing to the address of authorized body with the aim of assigning the aforementioned land plot for the applied citizen etc. However, analyzing the research of another attorney at law we can conclude that the bona fide requirements means that a person doesn’t know and couldn’t know about he or she has occupied a land plot unlawfully. It is also raised the question: does bona fide mean legality of such use? We agreed with the statement of S. Grinko that if legality is executing Ukrainian laws, then legality means bona fide anyway. However, bona fide doesn’t always mean legality.

The problem as to when bona fide started to act: at the moment of all use or at the moment of a land plot’s occupation should also be researched. Pursuant to article 119 of the Land Code of Ukraine, we came to the conclusion that bona fide can be defined during the whole time of a land plot’s use. However, article 344 of the Civil Code of Ukraine stipulates the acquisitive prescription for a person who really did occupy the strange property. Comparing the requirements of the two aforementioned laws we support the position written in the Land Code of Ukraine. Because it can be explained in a wide manner, namely, a person has to occupy and use the aforementioned land plot in a bona fide way.

2. *Openness* means that information about such use was well – known to the authorized bodies; however, they didn’t initiate a process concerning the spontaneous use of a land plot. The openness means that the fact of receipt shall be proved to third persons. However, R. Kostenko undersigned that a person does not have to inform other persons about the use of such a land plot in a special manner. Such definition of openness in Ukrainian legislation can lead to the numerous abuses. The statistics points to the exposure of 1,177 cases of spontaneous use of land plots in a year in Ukraine. Thus, the impunity of this action is to the fore.

The imperfection of requirements defined by article 119 of the Land Code of Ukraine shall be proven by part 3 of article 125 of the aforementioned law. Thus, the use of land plots before the determination of its boundaries on the area, receipt of a document confirming the right to it as well as state registration are prohibited. Also, the rejection or evasion of the actual land – user to

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receive such documents is a violation of the law provided by article 221 of the Land Code of Ukraine. Thus, a person can be liable pursuant to the Administrative Code of Ukraine as well as other laws. Besides, a violator shall pay for the actual use of a land plot pursuant to article 206 of the Land Code of Ukraine additionally. Thus, we discovered the imperfection between articles 119 and 125 of the Land Code of Ukraine. We propose to amend article 125 of the Land Code of Ukraine after the words 'before the use of a land plot' by the phrase 'besides use under acquisitive prescription'. It will be more convenient for users to register the acquisitive prescription to a land plot in a specially created list. Thus, the evidence of openness will be simpler.

3. *Uninterrupted use* – this term hasn't been defined by legislation yet. Such wording can mean that a person doesn't meet the requirements concerning a return of a land plot or a person does not carry out actions confirming the fact that he/she takes an obligation to return such a land plot. Thus, outstanding Ukrainian researcher I. Karakash supposes that it means that the subject of law using a land plot didn't leave such plot during a period of 15 years. Interruption in such use not depending on the subject of the acquisitive prescription doesn't stop the period of uninterrupted use.

4. *Absence of documents confirming the right of a person to such a land plot.*

The all-mentioned requirements lead to the appearance of a right on application to authorized bodies with a request to transfer of the certain land plot in ownership or use under part 1 of article 119 of the Land Code of Ukraine. However, part 1 of article 344 of the Civil Code of Ukraine secures to a person a right that after the termination of defined term the person automatically receives the ownership to a land plot if another provision wasn't defined by this Code. Thus, taking into account the aforementioned the question as to whether an authorized body is obliged to satisfy a request of a person or it is a right of a body is opened. We drew the conclusion that an authorized body shall decide this in every concrete event. In that way, pursuant to Ukrainian legislation, the acquisitive prescription isn't an absolute basis of ownership right to a land plot's appearance.

The receipt of a land plot under acquisitive prescription is carried out on the basis of a general procedure for receipt of land plots by means of applying to the authorized body of executive power or a local body. However, the receipt of the right to ownership to other objects pursuant to acquisitive prescriptions is carried out on the basis of a court decision.

R. Kostenko highlighted that it is a necessary thing to check the additional aspect of land as possible third party rights based on acquisitive prescription prior to commencement of land receiving/purchase, because a conflict between buyers of land plots and de-facto owners on the basis of acquisitive prescription shall trouble the process of purchase. The difficulties shall not be resolved quickly because there is little practice in courts concerning the clear resolving of a conflict. The ownership to a land plot received under acquisitive prescription is confirmed by a state document on the ownership of a land plot and is registered in the manner established by Ukrainian legislation.

And to conclude, taking into account that article 344 of the Civil Code of Ukraine in the part of receipt of ownership to a land plot refer us to land legislation and the latter has significant gaps in the regulation of aforementioned institute of law, the Land Code of Ukraine will be reformed with the aim of simplifying and securing the final reanimation of the institute of acquisitive prescription in Ukrainian legislation.

Literature

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