

PROPERTY RIGHTS

BETWEEN FACTUAL CIRCUMSTANCES AND JUDICIAL PROTECTION

ACQUISITIVE PRESCRIPTION AND THE FORMALIZATION OF INFORMAL CONTRACTS IN KOSOVO



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Introduction

The issue of acquiring and protecting property rights represents one of the central questions of every legal system, particularly in societies where real estate transactions have long been burdened by informal arrangements and incomplete records in public registries. In such circumstances, the legal order faces the challenge of reconciling the factual situation on the ground with formal legal rules, while at the same time preserving the fundamental principles of legal certainty and property protection.

Within Kosovo's legal system, this issue is addressed through two parallel mechanisms: the traditional doctrine of acquisitive prescription, pursued through court proceedings, and the more recent administrative model for the formalization of informal contracts, introduced with the aim of expediting the resolution of inherited property-related disputes. While acquisitive prescription is based on clearly defined statutory requirements and strict evidentiary standards, the formalization procedure introduces a more flexible approach, relying primarily on the factual situation and the probability of the existence of a legal relationship between the parties.

Such duality raises a number of theoretical and practical questions, particularly with regard to the relationship between efficiency and legal certainty, as well as the limits within which ownership rights may be recognized without a full judicial procedure. Accordingly, the aim of this paper is to conduct a comparative analysis of acquisitive prescription in practice and the procedure for the formalization of informal contracts, in order to examine their key characteristics, advantages, and shortcomings, with particular emphasis on the level of legal protection provided by each of these mechanisms.

Practical Example

In 1980, B.B. from Vushtrri/Vučitrn visited the home of M.M., also from Vushtrri/Vučitrn, where, in the presence of two witnesses from both sides, discussions were held regarding the sale and purchase of cadastral parcel no. 208, with an area of 60 ares. According to the claimant's (B.B.) allegations, during that meeting he paid the amount of 3,000 Deutsche Marks, after which the parties shook hands and agreed that M.M., once the necessary conditions were met, would conclude a formal sale and purchase agreement before the competent court.

Based on these facts, B.B. filed a lawsuit in 2018 before the Basic Court in Mitrovicë/Mitrovica – Vushtrri/Vučitrn Branch, seeking recognition of ownership rights over the parcel in question on the basis of lawful, peaceable and good faith possession.

In his statement of defense, M.M. did not dispute that the meeting had taken place in the presence of the aforementioned witnesses but denied that an agreement on the sale and purchase had been reached. He argued that no agreement had been reached regarding the purchase price and that he had received no payment. Instead, he claimed to have merely indicated to the claimant that they could also cultivate the land and harvest its fruits. He further emphasized that the property in question was not his exclusive ownership, but that inheritance proceedings concerning his late father first had to be completed, as well as consent obtained from his sister, who was a legal heir of the first order. Additionally, he stated that since 1999 he had no longer lived in Vushtrri/Vučitrn, but rather in Belgrade, and that he had no knowledge of who was using the parcel.

During 2019 and 2020, the main hearing was held, during which the parties and three witnesses were heard – one proposed by the claimant and two by the respondent. The claimant's witness confirmed that discussions between the parties had taken place but could not confirm that the money had been handed over. He further stated that he had subsequently heard from local residents that B.B. had purchased the parcel and that he knew with certainty that the claimant had been cultivating the disputed property for the past 15 years. He based this conclusion on the fact that his own parcel bordered the disputed parcel and that they carried out agricultural work simultaneously.

On the other hand, the respondent's witnesses stated that the parties had negotiated, but that no agreement had been reached because the respondent had not accepted the offered price of 3,000 Deutsche Marks. They also confirmed that unresolved inheritance-related issues constituted an obstacle, due to which M.M. could not independently dispose of the parcel in question.

In accordance with the principle of the burden of proof, the court held that the claimant had failed to establish the existence of an oral sale and purchase

agreement. Specifically, the claimant failed to demonstrate the actual transfer and receipt of funds, nor did they prove a clear and unequivocal intent by the respondent to transfer possessory control of the parcel. At the same time, the court established that the claimant had continuously used the parcel in question since 2003, namely for approximately 15 years prior to filing the lawsuit. However, since the applicable law prescribes a period of 20 years for the acquisition of ownership rights through acquisitive prescription in cases of good faith possession, the court concluded that this requirement had not been fulfilled.

Considering all evidence presented, the court rejected the statement of claim as unfounded, finding that the claimant had failed to prove lawful, peaceable, and good faith possession within the meaning of the relevant legal provisions. Upon appeal by the claimant, the Court of Appeals upheld the first-instance judgment, finding it to be correct and lawful.

* * *

This is how, in the ordinary course of events, court proceedings for the recognition of ownership rights based on acquisitive prescription would unfold, culminating in the issuance of a merits-based judicial decision.

In contrast, in 2024, Law No. 08/L-237 on the Cadaster of Immovable Property introduced a parallel procedure through which parties may seek recognition of ownership rights through the “formalization of informal contracts.” In this regard, the aforementioned claimant, B.B., would be required to submit an application to the Kosovo Cadastral Agency (KCA), together with the evidence in his possession, requesting that his informal contract be formalized and that the KCA issue a decision on the basis of which he would be registered as the owner in the relevant immovable property register. The respondent, M.M., is afforded the opportunity, once and if he becomes aware of the claimant’s request, to file an objection before the KCA within 30 days, after which a three-member Commission will assess whether the conditions exist for the application to be granted or denied. Following the Commission’s decision, the dissatisfied party may file a claim before the Administrative Court in Prishtinë/Priština within 30 days.

In a concise and simplified manner, this is how decision-making concerning one absolute right – the right to property – would take place in practice through the formalization procedure before the KCA.

Based on the presented factual and procedural framework, it is evident that Kosovo’s legal system recognizes two parallel mechanisms for resolving identical real-life situations: the acquisition of ownership rights through acquisitive prescription in court proceedings, and the recognition of ownership rights through the formalization of informal contracts before administrative bodies.

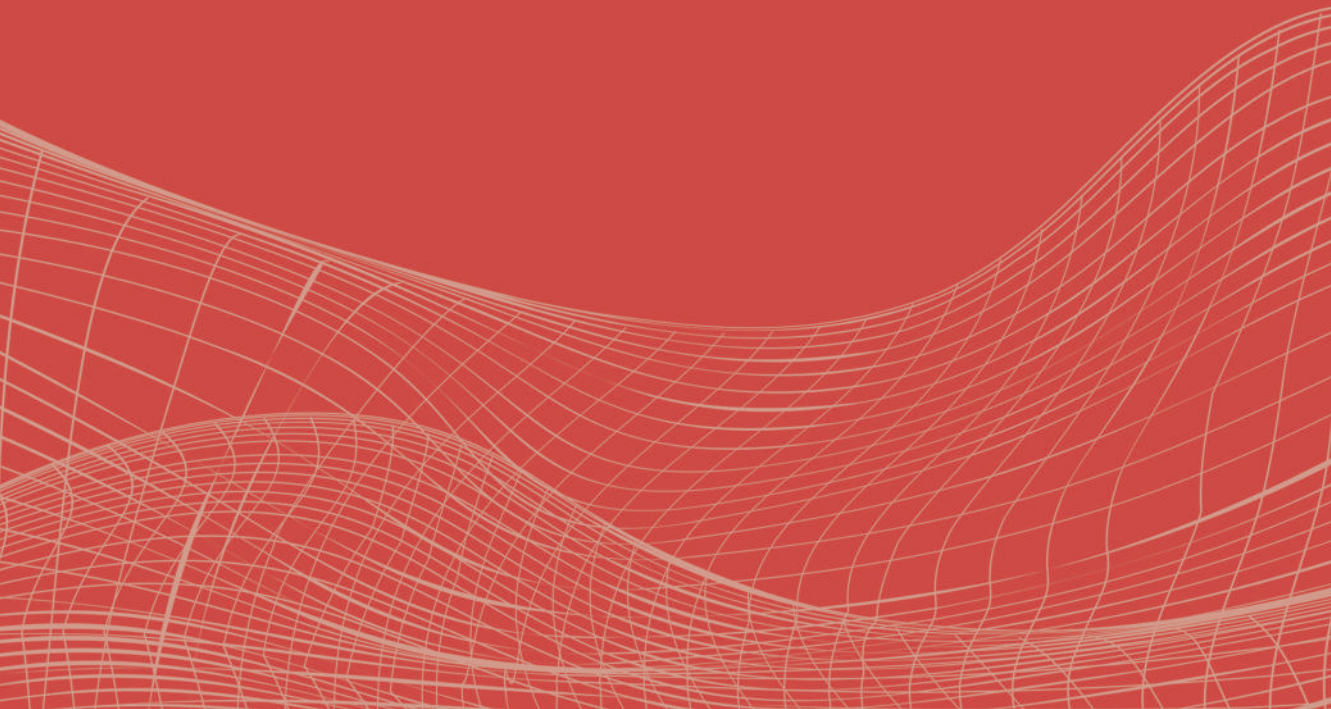
While judicial proceedings for the recognition of ownership rights through acquisitive prescription are grounded in strictly defined substantive and procedural requirements, accompanied by a high standard of proof and the full application of the adversarial principle, the formalization procedure introduces a more flexible administrative approach, placing emphasis on the factual situation and the need for the efficient resolution of inherited property-related disputes.

It is precisely within this duality that the fundamental dilemma of modern legal systems emerges: whether the law should remain anchored in formal rules and the principles of legal certainty, or adapt to social realities through pragmatic mechanisms that prioritize factual situations, even at the expense of departing from traditional legal standards.

Accordingly, the following sections of this paper will provide a detailed analysis of:

- 1** ——— acquisitive prescription as a traditional doctrine of property law through practice;
- 2** ——— the procedure for the formalization of informal contracts as a modern administrative (parallel) procedure; and
- 3** ——— the relationship between these mechanisms, with particular emphasis on legal certainty, the standard of proof, and the potential for abuse.

**THEORETICAL FRAMEWORK:
THE DOCTRINE OF ACQUISITIVE
PRESCRIPTION**



Concept and Legal Nature of Acquisitive Prescription

Acquisitive prescription (Lat. *usucapio*) represents an original mode of acquiring ownership rights, based on long-term, lawful, and good faith possession of a particular property, subject to the fulfillment of legally prescribed conditions. Its legal essence lies in the transformation of a factual situation into a legally recognized right, thereby establishing a balance between legal certainty and the protection of the legitimate expectations of participants in legal transactions.

Unlike derivative modes of acquiring ownership rights, where the right is transferred from the previous owner to the acquirer, in the case of acquisitive prescription the right is acquired originally, independently of the legal status of the previous title holder. It is precisely in this fact that its original character lies, enabling the rectification of deficiencies in legal transactions, particularly in situations where a legal basis is absent, invalid, or has not been formalized in accordance with the law.

The doctrine of acquisitive prescription reflects the long-term evolution of legal systems, with its roots dating back to Roman law, where it served the function of stabilizing property relations and safeguarding legal transactions. Modern legal systems, including Kosovo's legal system, have retained this doctrine as a key mechanism for resolving conflicts between formal legal rights and the factual situation on the ground.

Elements of Acquisitive Prescription

In order to acquire ownership rights through acquisitive prescription, certain conditions must be cumulatively fulfilled. In legal theory and practice, these are regarded as the constitutive elements of this doctrine.

Possession as the Fundamental Element

Possession represents factual control over a thing (*corpus*) accompanied by the intention to hold the thing as one's own (*animus domini*). Such possession must be:

- **continuous** – without interruption in the exercise of factual control;
- **peaceable** – without recourse to force; and
- **public** – visible and recognizable to third parties.

In the context of acquisitive prescription, possession must possess the quality of ownership possession (*possessio civilis*), and not merely detention. In other words, the possessor must act as the holder of ownership rights, rather than as a person acknowledging another's right.

Good Faith (*Bona Fides*)

Good faith represents the subjective element of acquisitive prescription and implies the possessor's belief that the property he or she possesses belongs to him or her on a lawful basis. This belief must exist at the moment possession is acquired and continue throughout the entire period required for acquisitive prescription. As a rule, the subsequent loss of good faith leads to the interruption of the statutory period required for acquisitive prescription.

In property law theory, good faith is assessed according to objective standards of diligence, meaning that a certain degree of due diligence is expected from the possessor when acquiring possession. Ignorance resulting from gross negligence cannot be regarded as good faith.

Lawful Basis (*Titulus*)

A lawful basis represents the legal foundation upon which possession is based, most commonly in the form of a legal transaction that would be suitable for the transfer of ownership had all formal legal requirements been fulfilled. In practice, these most commonly include:

- **a sale and purchase agreement;**
- **a gift agreement; and**
- **an exchange agreement.**

Within the context of Kosovo's legal system, the issue of informal contracts is of particular importance. Although such contracts do not produce immediate legal effect with regard to the transfer of ownership rights, they may nevertheless constitute a relevant *titulus* for acquisition through acquisitive prescription.

Passage of Time

The passage of time represents the objective element of acquisitive prescription and varies depending on the type of prescription involved (ordinary or extraordinary). The temporal requirement serves the function of filtering factual situations, so that only those which are lasting and stable may evolve into legally recognized rights.

Types of Acquisitive Prescription

Modern legal systems generally distinguish between two principal types of acquisitive prescription.

Ordinary Acquisitive Prescription

Ordinary acquisitive prescription requires the cumulative fulfillment of all statutory conditions, primarily the existence of good faith possession and a lawful legal basis, together with the expiration of the shorter

statutory period prescribed by law. Pursuant to Article 40, paragraph 2 of the Law on Ownership and Other Real Rights, this period amounts to 10 years.

Extraordinary Acquisitive Prescription

Extraordinary acquisitive prescription allows for the acquisition of ownership rights even in the absence of a lawful legal basis, provided that good faith possession exists and that the longer statutory period prescribed by law has elapsed. Its function is to definitively resolve long-standing factual situations, even where such situations are not legally perfect. Pursuant to Article 40, paragraph 1 of the Law on Ownership and Other Real Rights, this period amounts to 20 years.

Functions and Importance of Acquisitive Prescription within the Legal System

The doctrine of acquisitive prescription serves multiple functions within the legal system:

- **stabilization of legal transactions;**
- **harmonization of the factual and legal situation;**
- **protection of the good faith possessor; and**
- **prevention of endless ownership disputes.**

In legal systems burdened by historical and transitional challenges in immovable property records, as is the case in Kosovo, acquisitive prescription carries profound practical significance. It enables factual relationships, often created outside formal legal channels, to be integrated into the legal order.

Acquisitive Prescription in Practice

Although the doctrine of acquisitive prescription appears normatively clear and systematically coherent in legal theory, its full legal significance becomes apparent through practice, where abstract legal rules are applied to specific factual circumstances. It is precisely through court proceedings that the consistent application of statutory requirements is ensured, particularly with regard to the good faith of possession, the existence of a lawful basis, and the continuity of the exercise of factual control.

Case law in Kosovo demonstrates that acquisitive prescription, as a legal doctrine, serves as a mechanism for the protection of property rights, given that courts insist on the complete and lawful establishment of facts, accompanied by the application of strict standards of proof. Such an approach, although it may pose challenges for parties in situations involving informal legal transactions, simultaneously ensures that ownership rights are not based on assumptions, but rather on clearly established and proven circumstances.

In cases involving informal sale and purchase arrangements, which have been frequent in practice, courts play a particularly important role in distinguishing between mere factual use and a legally relevant basis for the acquisition of ownership rights. In this way, long-term possession is prevented from ripening into ownership unless all legally prescribed conditions have been fulfilled.

Although judicial proceedings may be more time-consuming and procedurally complex, it is precisely this structure that guarantees legal certainty, as it enables full adversarial hearing and a comprehensive assessment of evidence. In this manner, judicial protection in acquisitive prescription proceedings ensures a balance between the protection of the factual situation and the preservation of the fundamental principles of property law.

Limitations of Acquisitive Prescription as a Legal Mechanism

Despite its normative foundation and central role within property law, the doctrine of acquisitive prescription does not operate in practice without certain inherent limitations. These limitations primarily arise from the very nature of civil proceedings, which are based on strict rules of evidence and the principle of party disposition, circumstances which may, in certain cases, hinder the realization of rights.

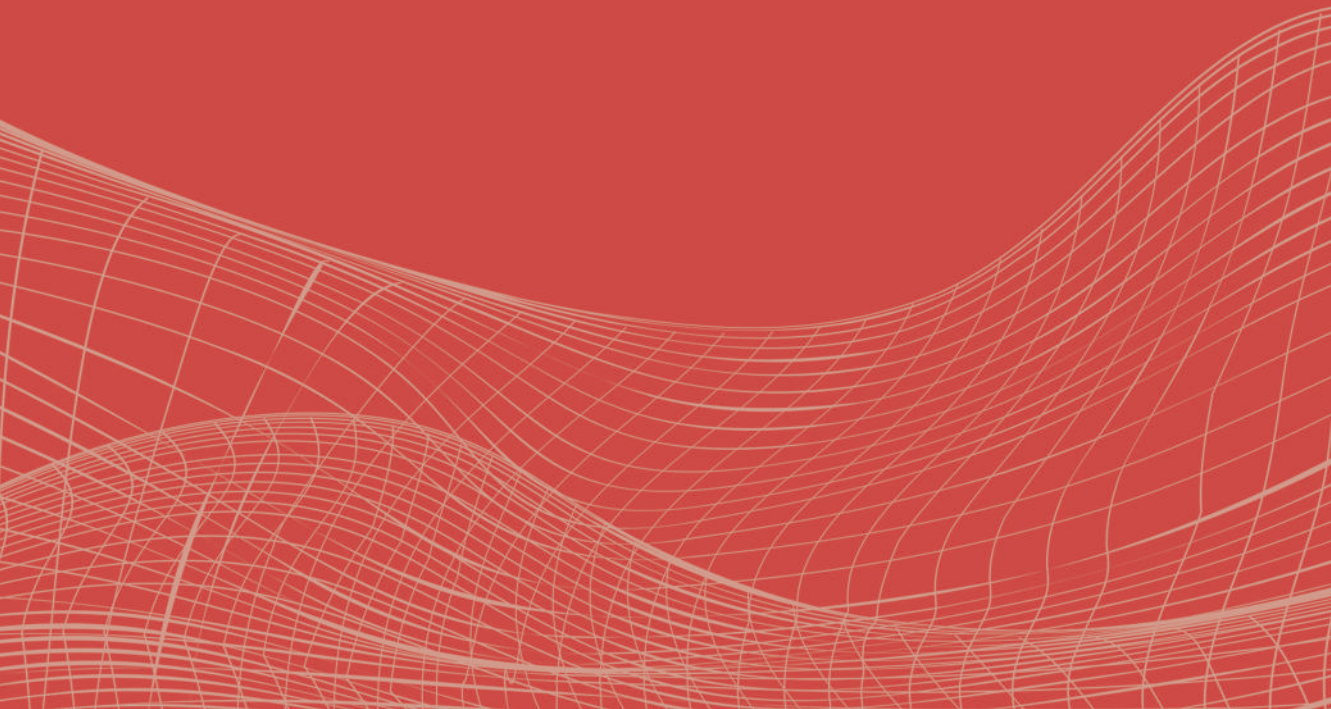
Namely, the high standard of proof, particularly with regard to the good faith of possession and the existence of a lawful basis, often represents an obstacle for parties whose legal relationships were founded on informal agreements. In such situations, even where long-standing and undisputed factual possession exists, the absence of formal evidence may result in the rejection of the statement of claim.

Moreover, court proceedings in such matters are frequently lengthy, which additionally burdens the parties and delays the final resolution of property-related disputes. The formalistic approach adopted by courts, although grounded in the need to preserve legal certainty, may in certain cases produce outcomes that are not fully aligned with actual social realities.

However, it is precisely this strictness and “insistence on evidence” that simultaneously constitute the principal advantage of judicial proceedings, as they ensure a higher degree of legal certainty and protection of property rights. In this regard, the limitations of acquisitive prescription cannot be viewed in isolation, but rather in light of its function as a mechanism that prevents arbitrariness and ensures that ownership rights are not established solely on the basis of factual circumstances.

It is precisely at this point that the need arises to consider alternative mechanisms aimed at overcoming the aforementioned shortcomings of judicial proceedings, while at the same time raising new questions concerning the standard of legal protection and the preservation of legal certainty.

**THE PROCEDURE FOR THE FORMALIZATION OF
INFORMAL CONTRACTS AS AN ALTERNATIVE
MODEL FOR THE RECOGNITION OF
OWNERSHIP RIGHTS**



With the aim of overcoming the long-standing problems associated with the informal transfer of immovable property, the legislator introduced into Kosovo's legal system the procedure for the formalization of informal contracts as a special administrative mechanism for the recognition of ownership rights. This model represents a significant departure from the traditional judicial route, leveraging simplified procedural rules and a more flexible approach to evidence to expedite the resolution of a large volume of unresolved property disputes.

Law No. 08/L-237 on the Cadaster of Immovable Property, particularly Article 40 thereof, provides for the establishment of a special Commission competent to conduct the procedure for the formalization of informal contracts, or, in the terminology of the Law, the "officialization of the factual situation," as well as the rules governing the course of that procedure.

The essence of this procedure lies in the attempt to recognize the factual situation, where supported by certain evidence of the existence of an informal legal relationship, as a basis for the registration of ownership rights in public registries. In this manner, the legislator seeks, through an administrative framework, to address situations in which parties did not possess a formally valid legal basis but had nonetheless factually established a particular property-related relationship.

It is undisputed that such an approach contributes to efficiency, as it enables parties to avoid lengthy and procedurally demanding court proceedings. However, it is precisely this efficiency, grounded in the simplification of procedural and evidentiary standards, which raises the question of the extent to which the principle of legal certainty is preserved within such a model.

Unlike judicial proceedings, where ownership rights are determined through adversarial proceedings and a comprehensive assessment of evidence, the formalization procedure entails a certain shift in focus toward the factual situation and the probability of the existence of a legal relationship. In doing so, the traditional standards of proof characteristic of property disputes are, at least partially, diluted.

Furthermore, the adversarial principle is not always fully guaranteed in this procedure, given that the participation of the opposing party depends upon its timely response to the submitted application. In cases where a party is unavailable or has not been served with adequate notice, there is a risk that decisions may be rendered without a comprehensive review of the relevant facts.

In this context, although the formalization procedure represents a legitimate attempt to resolve inherited legal problems, it simultaneously raises the question of the relationship between efficiency and legal certainty. It is precisely this issue that will be the subject of further analysis through a comparative examination of this procedure and the judicial model of acquiring ownership rights through acquisitive prescription.

Regulatory Framework and Procedure for Formalizing Informal Contracts

The procedure for the formalization of informal contracts within Kosovo's legal system is governed by the Law on the Cadaster of Immovable Property (Law No. 08/L-237), with the central normative basis contained in Article 40 of this Law, which further regulates the organization and implementation of the procedure for the formal recognition of the factual situation and the elimination of inconsistencies with the immovable property register.

Pursuant to this provision, the legislator provides for the establishment of a special body—a Commission tasked with reviewing and deciding upon the formal recognition of factual situations—composed of experts in property law and the legal system. This Commission plays a central role in the procedure, as it evaluates submitted applications and evidence and decides whether the conditions for the formalization of informal legal relationships have been fulfilled.

The procedure is initiated by submitting an application to the competent cadastral institution, namely the Kosovo Cadastral Agency (KCA), with the applicant being obliged to provide evidence supporting the existence of the informal legal relationship. In this regard, the Law does not insist exclusively on formal documents but allows for the use of a broader range of evidence, including witness testimony, statements of the parties, and other indicia pointing to the existence of a factual relationship.

Following the submission of the application, the opposing party is notified of the initiated procedure and granted a deadline to submit objections, thereby formally ensuring its participation in the proceedings. However, the nature of this mechanism indicates that the active protection of the opposing party's rights depends to a significant extent on its timely response.

Acting upon the request, the Commission examines all relevant circumstances and decides whether the conditions exist for the formal recognition of the factual situation, namely the formalization of the informal contract. In this process, the focus of decision-making shifts from strictly formal requirements toward an assessment of the factual situation and the probability of the existence of a legal relationship between the parties.

The resulting decision constitutes the legal basis for registering ownership rights in the cadastral records. An administrative dispute may be initiated against such a decision before the competent court, thereby ensuring subsequent judicial oversight of its legality.

Considering this normative framework, the procedure for the formalization of informal contracts may be characterized as an administrative mechanism that seeks, through the institutionalized assessment of the factual situation, to overcome the shortcomings of formal legal transactions. However, the fact that decision-making is based on more flexible criteria and that judicial review occurs only subsequently indicates a certain departure from the traditional standards of protection of property rights, which will be the subject of further critical analysis.

The Review and Decision-Making Commission – Composition, Appointment, and the Legal Nature of Decision-Making

The central element of the procedure for formalizing informal contracts, pursuant to Article 40 of the Law on the Cadaster of Immovable Property, is the Commission for reviewing and deciding on factual situations and inconsistencies with the Immovable Property Rights Register (IPRR). It is precisely through the composition, appointment procedure, and powers of this body that the specific nature of the overall formalization procedure becomes evident.

In accordance with the Law, the Commission is composed of three members: an expert in the field of property rights, proposed by the Kosovo Judicial Council as chairperson; a legal expert proposed by the Office of the Prime Minister; and an expert in the field of geodesy and cadaster proposed by the Kosovo Cadastral Agency. Such composition reflects the legislator’s attempt to ensure an interdisciplinary approach to decision-making by combining legal and technical expertise.

However, the method of appointing the members of the Commission indicates a strong role of the executive branch in its formation, given that the final appointment is made by the Government, upon a proposal submitted through the Ministry¹. Furthermore, the mandate of the Commission members is linked to the duration of the cadastral reconstruction project, indicating the temporary and project-oriented character of this body.

From the standpoint of its legal nature, the Commission is authorized to decide on the recognition and formalization of non-contentious property rights, including informal transfers that were not legally completed prior to the establishment of the notarial system. In this regard, the Commission effectively decides on matters which, by their nature, fall within the domain of judicial protection of property rights.

Although the Law provides for the application of the rules of non-contentious procedure and relevant substantive legislation, the fact that these matters are decided not by a court, but by an administrative body, represents a significant departure from the traditional model of protection of real rights. It is particularly important to emphasize that, in the event of a dispute between the parties, the Commission does not have the authority to decide the matter on its merits but is instead obliged to suspend the procedure and refer the parties to civil proceedings before the competent court.

Such a solution confirms that, despite the introduction of an alternative mechanism, the legislator continues to retain the court as the ultimate

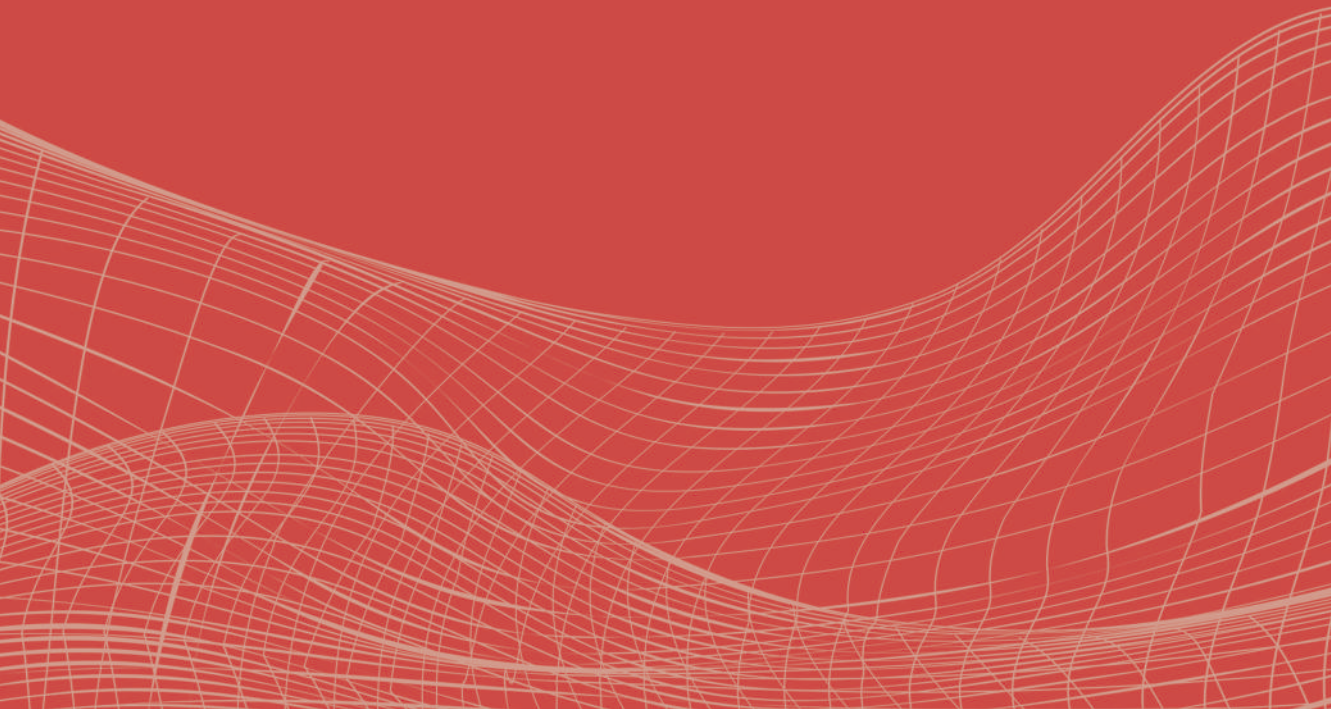
¹ The legal language itself does not specify which Ministry is concerned, while Article 3, paragraph 1, subparagraph 29 of the Law on the Cadaster of Immovable Property, which defines the terms used in the Law, stipulates: “Ministry – the relevant ministry for cadaster.”

instance for the protection of property rights in situations where a dispute exists. However, in all other situations, where a dispute is not formally or timely raised, the Commission renders decisions that directly affect the registration of ownership rights in public records.

Additionally, legal protection against decisions of the Commission is ensured through the possibility of initiating an administrative dispute before the competent court. However, this review is subsequent in nature and limited to the assessment of the legality of the rendered decision, which is qualitatively different from judicial proceedings in which the court directly establishes the facts and determines the existence of rights.

In this context, it may be concluded that the Commission constitutes a hybrid body, combining elements of administrative and quasi-judicial decision-making. Although such a model enables the more efficient resolution of a large number of cases, it simultaneously raises questions regarding institutional independence, standards of proof, and the level of legal protection, particularly bearing in mind that the decisions concern an absolute right – the right to property.

**COMPARATIVE ANALYSIS – ACQUISITIVE
PRESCRIPTION THROUGH JUDICIAL
PROCEEDINGS AND THE FORMALIZATION OF
INFORMAL CONTRACTS**



A comparative analysis of the doctrine of acquisitive prescription and the procedure for the formalization of informal contracts demonstrates the existence of two parallel legal mechanisms which, although pursuing the identical objective – the recognition and stabilization of ownership rights – are based on fundamentally different legal foundations and methodologies of decision-making.

Acquisitive prescription, as a traditional doctrine of property law, is grounded in clearly defined substantive legal requirements and is realized exclusively through judicial proceedings, with the full application of adversarial principles, equality of arms, and strictly codified rules of evidence. In contrast, the procedure for the formalization of informal contracts constitutes an administrative mechanism introducing a more flexible approach, aimed at accelerating the resolution of a large number of unresolved property-related disputes.

Standard of Proof and Legal Certainty

One of the key differences between these two models is reflected in the standard of proof. In judicial proceedings concerning acquisitive prescription, the burden of proof lies with the claimant, who must conclusively establish the existence of all legally prescribed conditions – good faith, a lawful basis, and the passage of time. The court, as an independent authority, conducts a comprehensive assessment of the evidence while safeguarding the rights of both parties.

Conversely, the formalization procedure introduces a significantly more flexible evidentiary framework, in which decisions are based on an assessment of the factual situation and the probability of the existence of a legal relationship. Although such an approach is functional from the standpoint of efficiency, it necessarily results in a lower standard of legal certainty, as ownership rights may be recognized even in situations where a complete and unequivocal evidentiary basis does not exist.

In this regard, it may be concluded that judicial proceedings, although more demanding, ensure a higher degree of legal certainty, whereas the formalization procedure introduces a model that favors expediency at the expense of legal precision.

Procedural Protection and the Adversarial Principle

Judicial proceedings concerning acquisitive prescription are founded upon the adversarial principle, which entails the active participation of both parties in the proceedings, the right to present evidence, and the right to challenge the allegations of the opposing party. Such a model ensures balance between the parties and enables the court to render a decision based on a complete and objective assessment of the facts.

By contrast, within the formalization procedure, the adversarial principle is not a structural prerequisite of the proceedings. Instead, its activation depends entirely on the procedural initiative of a party seeking to assert its rights. In cases where the opposing party fails to respond in a timely manner or is not duly notified of the proceedings, there is a risk that a decision may be rendered in absentia.

Such a procedural solution, although it expedites the proceedings, simultaneously weakens the level of protection afforded to property rights, particularly bearing in mind that ownership constitutes an absolute right requiring the highest degree of legal protection.

Institutional Framework and Independence of Decision-Making

Acquisitive prescription is adjudicated by the court as an independent and impartial authority, whose constitutional mandate is to uphold legality and protect the rights of the parties. Judges adjudicate in accordance with the law, free from the influence of the executive branch, and subject to clearly defined procedural guarantees.

On the other hand, the formalization procedure is entrusted to a commission which, although composed of experts, possesses an administrative character and whose members are appointed by the executive branch. Such an institutional framework, although functional from an organizational standpoint, does not provide the same level of guarantees of independence as the judicial system.

Furthermore, judicial review within this model exists only subsequently, through an administrative dispute, and is limited to the assessment of legality rather than a full merits-based factual analysis characteristic of civil proceedings.

Risk of Abuse and Legal Stability

Precisely due to its flexible methodology and diminished procedural safeguards, the formalization procedure carries a heightened risk of abuse. There is a risk that factual possession, even where it lacks a legitimate legal basis, could be erroneously converted into ownership rights, thereby undermining legal certainty and public confidence in the judicial system.

In contrast, the strict requirements governing acquisitive prescription operate as a filter preventing arbitrary acquisition of ownership rights, thereby ensuring the stability of legal transactions and the protection of the legitimate interests of all parties involved.

Efficiency v. Legal Certainty

The formalization procedure undeniably offers advantages in efficiency, especially given the vast backlog of unresolved property claims. However, it raises a critical question: can administrative expediency justify departure from the fundamental principles that safeguard property rights?

In this regard, it may be concluded that judicial proceedings concerning acquisitive prescription, notwithstanding their inherent delays and procedural complexities, afford a superior and more substantive form of legal protection. The formalization procedure, although useful as a supplementary mechanism, cannot fully replace judicial protection and should therefore be viewed as an exception rather than the rule.

CONCLUSION AND RECOMMENDATIONS



The comparative analysis of the institute of acquisitive prescription and the procedure for the formalization of informal contracts demonstrates that, although both mechanisms pursue the same objective – the stabilization of property relations and the harmonization of the factual and legal situation – they are founded upon substantially different legal approaches. Judicial proceedings concerning acquisitive prescription, despite their complexity and time-consuming nature, ensure a high level of legal certainty through strictly defined requirements, adversarial proceedings, and a comprehensive assessment of evidence by an independent court.

Conversely, the formalization process reflects a pragmatic legislative response to the complexities of informal property transfers. Yet, by adopting more flexible evidentiary standards, it may lead to a dilution of the established legal principles intended to safeguard ownership. Although this model contributes to efficiency and accelerates the resolution of a large number of cases, its administrative nature and limited level of procedural guarantees cannot provide the same degree of legal protection as judicial proceedings.

In this context, formalization should be viewed as a supplementary mechanism whose application must remain restrictive and carefully controlled, so as not to undermine legal certainty and public confidence in the legal order. The right to property, as an absolute right, cannot be based solely on probability and the factual situation, but must rest upon clearly established facts and legal grounds, something that can be fully ensured only through judicial proceedings.

In light of the preceding analysis, the following recommendations are proposed for policymakers and judicial stakeholders:

- **The Legislature:** Should define more precisely the criteria for formalization, specifically regarding the evidentiary standard and the rigorous verification of the opposing party's interests, to minimize the potential for discretionary arbitrariness.
- **The Executive and Competent Authorities (KCA and Commissions):** Should prioritize maximum transparency throughout the formalization process. This includes ensuring duly served and effective notice to all interested parties and adopting a precautionary, restrictive approach in cases where even a minor indication of a dispute exists.
- **The Judiciary:** Should utilize administrative litigation to establish a uniform and consistent case law for reviewing Commission decisions, with a particular focus on upholding the standards of proof and the constitutional protection of property rights.
- **The Academic and Professional Community:** Should maintain continuous oversight of this doctrine's implementation to identify and highlight systemic shortcomings and potential vulnerabilities to abuse.

