# USUCAPTION IN THE ROMAN LAW AND IN THE CZECHOSLOVAK CIVIL CODE FROM 1950

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Usucaption, lat. ***usucapio***, as one of the ways of acquiring civil ownership has its roots in the XII. Tables and despite a different social and ideological situation during the second half of the 20th century it is included into the unified civil code, which was adopted by the National Assembly of the Czechoslovak republic on October 25, 1950. On the other hand, it is clear that through the long period the institute of usucaption has undergone many changes and considerable development took place.

## XII TABLES

According to Diósdi, Klein and Kaser are surely right in suggesting that *usus auctoritas*, the antecedent of *usucapio*, was originally a provision bearing upon the law of evidence. The actual and continuous use of the thing discharged the possessor from having to prove his title. In such a way *usus auctoritas* at the same time performed the function of the later *usucapio*. The original idea, however, did not yet stress the acquisition of ownership, but the discharge from producing evidence. *Usus auctoritas* was generally available to everybody who could claim an *usus* of one or two years. The requirements of *bona fides* and *iustus titulus* did not yet exist in early law.

## PRECLASSICAL ROMAN LAW

*Usus auctoritas* was a subject to a far reaching transformation in preclassical law. This is most strikingly manifested by the alteration of its name. Thenceforth it was called *usucapio*. Roman *usucapio* has quite close links with the transfer of ownership. We have to bear in mind that the consolidation of the informal acquisition, i.e. the transfer of a *res mancipi* by

*tradition*, was an important function of *usucapio*. Preclassical law not only created the classical notion of *usucapio*, but at the institution itself was considerably transformed by the introduction of several requirements – i.e. *bona fides* and *iustus titulus,* as well as the prohibition of *usucapio* on *res furtiva*, which meant a limitation of *usucapio*. So the field of application of *usucapio* became considerably narrower.

## CLASSICAL ROMAN JURISPRUDENCE

*Usucapio* was by the classical Roman jurisprudence defined as an acquisition of ownership of a thing belonging to another through possession of it (*possessio*) for a period fixed by law. Further requirements of *usucapio* under *ius civile* were (a) *bona fides* (good faith), i.e. the possessor's honest belief that he acquired the thing from the owner (while, in fact, he acquired it from a non-owner), and through a transaction which legally was suitable for the transfer of ownership (while, in fact, it was not). Good faith was required on the part of possessor only at the beginning of his possession; (b) a just cause (*iustus titulus*), i.e. an act of liberality (*donatio*) of the owner or an agreement with him (a purchase) which would justify the acquisition of ownership if there were not a defect in the transaction itself (*traditio* of *res mancipi* instead of *mancipatio*) or in the person of the transferor (a non-owner). An erroneous belief of the usucaptor that there was a just case did not suffice for *usucapio*. Possession of the usucaptor had to be continuous and uninterrupted. *Usucapio* was accessible only to Roman citizens and on things on which Quiritary ownership was admissible.

We have learned much about this institute from Gaius who devotes much space to it in his Institutes (Gai. 2, 41 – 59). Moreover, due to a casuistic approach of Roman lawyers there were several "types" of *usucapio* defined, such as *usucapio ex Rutiliana constitutione, usucapio libertatis, usucapio pro derelicto, usucapio pro donato, usucapio pro dote, usucapio pro emptore, usucapio pro herede, usucapio pro legato, usucapio pro soluto, usucapio pro suo, usucapio servitutis.*

## JUSTINIAN'S CODIFICATION

Since one of Justinian's main concerns was to preserve as much as possible from the wisdom and knowledge of classical period the regulations of *usucapio* are almost the same. He made only slight changes as to the time of possession – he changed a 1-year period for

movables to a 3-year period and a 2-year period for immovables to a 10-year one *inter praesentes* and a 20-year one *inter absentes*. He has also allowed the possession of a *bona fide* possessor to be counted in the time period of his successor.

**CZECHOSLOVAK CIVIL CODE FROM 1950**

Even though the Czechoslovak Civil Code from year 1950 was formulated under different socio-ideological conditions than the Roman definitions were, it still keeps in line with the ancient Roman legal culture and definitions. This is partly due to the fact that legal systems here were influenced by the Roman law either through Hungarian customary law, which was based partly on Roman law as interpreted in the Middle Ages, or through Austrian civil law, which was vastly founded on Roman law. Partly it's because the definitions of ancient Roman lawyers were still proving to be useful and valid. So the main differences are in the way this institute was formulated – since the language of modern civil code was much more abstract than the casuistic approach of ancient lawyers. Thus there are 4 brief paragraphs defining usucaption in the Czechoslovak Civil Code instead of hundreds of case studies of tens lawyers from ancient Roman Empire.

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