THE EXTINCTIVE PRESCRIPTION OR LACK OF PRESCRIPTION OF THE GROUNDED ACTION FOR RECOVERY ACCORDING TO THE PRIVATE PROPERTY RIGHT

Prof. Iosif R. Urs, PhD.

TITU MAIORESCU UNIVERSITY, Faculty of Law

Senior Lect. Carmen Todicea, Ph.D cand.

TITU MAIORESCU UNIVERSITY, Faculty of Law

1. PRELIMINARIES REGARDING THE PRESCRIPTION REGULATION OF THE ACTION FOR PROPERTY RECOVERY.

In the context of absence of a clear and precise regulation, but also based on the text of law, that directly or indirectly settle the imprescriptibility of the action for real estate or movable recovery based on the public property right, matter of extinctive prescription, precisely the prescribable or imprescriptible character of the real estate or movable assets recovery based on private property, has been the object of doctrinaire controversy magnified after the Ordinance no. 167/1958 regarding extinctive prescription. De lege lata neither the Civil Law nor other special provisions contain a text of law that would represent the foundation of extinctive prescriptibility or imprescriptibility of the recovery action in the purpose of capitalizing the private property right.

In the incomplete and unclear formulation of Article 1890, The Civil Law resorts to order: "all actions, both real and personal, declared imprescriptible by the law and for which no prescription term was defined, will be prescribed in 30 years, and the person calling upon this prescription will not be bound to issue a title and also mala fide can not be opposed to him/her", and it does not distinguish between the extinctive and acquisitive prescription, or between the real estate and movable assets.

On the other hand, as soon as the prescriptibility under extinctive aspect exceeds the regulation domain of the Ordinance no. 167/1958, and Article 1890, the Civil Law states in terminis the prescribable character in 30 years of all real actions for which has not established another prescription term and also did not declare them as imprescriptible and on the other hand, as there is no legal text expressly stating the imprescriptibility of the real estate recovery action, the legal practice and the specialty literature ruled, without legal basis and with an unconvincing scientific grounding: first of all that Article 1890 from the Civil Law does not regard the real estate recovery action (as it is imprescriptible), as the property right is not cancelled by lack of use, no matter how long the owner's passivity, the continuous character of the property right being incompatible with the

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1 Article 136 point 4 from the Romanian Constitution in revised form, although in terminis it does not foresee the public property goods' imprescriptibility, resorting to stating: "the public property goods are inalienable...", the imprescriptible character exceeds all debates to the extent which the imprescriptibility, acquisitive or extinctive, represents the collorary of inalienability, an asset being imprescriptible to the extent to which it is inalienable (M. Nicolae - Prescripția extinctivă [Extinctive Prescription, , Rosetti Publishing House, Bucharest, 2004, page 381). In return, Article 1844 Civil Code, expressly foresees: "the possessors' domain, that through their own nature, or through a statement of the law, can not be prescribed, they can not be a private property object, but they are eliminated from trade" (the text considers the goods pertaining to public domain). Law no. 213/1998, regarding public property and its legal regime (published in the Official Gazette no. 448/November 24th 1998, with the subsequent addendums), although it does not expressly regulate the imprescriptible character of the public property goods' recovery action, states under Article 11 paragraph 1: "the public domain goods' are inalienable, cannot be initiated before the court and are imprescriptible, as follows: [...] c) can not be acquired by other persons by acquisitive prescription or by effect of bona fide possession on movable assets". So, as these assets are inalienable and cannot be acquired by effect of acquisitive prescription or of the bona fide possession, they can be claimed anytime and against any persons, implicitly revealing the imprescriptible character under the extinctive aspect of such action. In the same manner, with the correspondent determinations, the Law of Public Local Administration no. 213/1998, although it does not expressly regulate the imprescriptable or prescriptible character of the public property goods' recovery action, states under Article 11 paragraph 1: "the public domain goods' are inalienable, cannot be initiated before the court and are imprescriptible, as follows: [...] c) can not be acquired by other persons by acquisitive prescription or by effect of bona fide possession on movable assets". So, as these assets are inalienable and cannot be acquired by effect of acquisitive prescription or of the bona fide possession, they can be claimed anytime and against any persons, implicitly revealing the imprescriptible character under the extinctive aspect of such action. In the same manner, with the correspondent determinations, the Law of Public Local Administration no. 213/1998, although it does not expressly regulate the imprescriptible character of the public property goods' recovery action, states under Article 11 paragraph 1: "the public domain goods' are inalienable, cannot be initiated before the court and are imprescriptible, as follows: [...] c) can not be acquired by other persons by acquisitive prescription or by effect of bona fide possession on movable assets". So, as these assets are inalienable and cannot be acquired by effect of acquisitive prescription or of the bona fide possession, they can be claimed anytime and against any persons, implicitly revealing the imprescriptible character under the extinctive aspect of such action. In the same manner, with the correspondent determinations, the Law of Public Local Administration no. 213/1998, although it does not expressly regulate the imprescriptible character of the public property goods' recovery action, states under Article 11 paragraph 1: "the public domain goods' are inalienable, cannot be initiated before the court and are imprescriptible, as follows: [...] c) can not be acquired by other persons by acquisitive prescription or by effect of bona fide possession on movable assets". So, as these assets are inalienable and cannot be acquired by effect of acquisitive prescription or of the bona fide possession, they can be claimed anytime and against any persons, implicitly revealing the imprescriptible character under the extinctive aspect of such action. In the same manner, with the correspondent determinations, the Law of Public Local Administration no. 213/1998, although it does not expressly regulate the imprescriptible character of the public property goods' recovery action, states under Article 11 paragraph 1: "the public domain goods' are inalienable, cannot be initiated before the court and are imprescriptible, as follows: [...] c) can not be acquired by other persons by acquisitive prescription or by effect of bona fide possession on movable assets". So, as these assets are inalienable and cannot be acquired by effect of acquisitive prescription or of the bona fide possession, they can be claims...
limitation in time of its exercise and, second of all the provisions of Article 1890 Civil Law justifies the prescriptibility of real estate recovery action in a term of 30 years, as the reasons on which the real estate property's imprescriptibility is grounded, respectively the stability of the estate's legal situation, would not be found in the case of immovable goods.

Compared to the imprecise and non-differential elaboration of Article 1890 Civil Law, we wonder if its provisions regard both the extinctive and the acquisitive prescription, and if this text of law can regarded as the legal basis of the extinctive imprescriptibility of the real estate recovery action (by restrictive interpretation) but also of the movable claim action's prescriptibility, and if such a legal regime difference, finds its origin, at least in the spirit of this legal document.

2. LEGISLATIVE ORIGIN OF THE CONTROVERSY REGARDING THE 30 YEAR PERIOD FORESEEN UNDER ARTICLE 1890 CIVIL LAW.

The doctrinaire dispute regarding the movable claim action's prescriptibility originates from the provisions of Article 1890 Civil Law, where the acquisitive prescription (usucapio) is uninspired and not differentiated regulated next to the extinctive prescription, although the two legal institutions are not identical.

As a matter of fact, the controversy's roots go back to the Roman Law, that knew both the acquisitive prescription (usucapio) as means of acquiring the property of a movable or immovable good, based on the uninterrupted use during a period imposed by law, and the prescription (prescription), as a means of extinguishing any real action not exercised during the period foreseen by the law.

The common features of the two institutions determined their unification, first of all in the Byzantine law and subsequently, in the French Law. The idea of unifying the acquisitive and extinctive prescription was not one of the most inspired ones. So, following the Byzantine tradition, the French Civil Law in 1840 unified under the same title "De la prescription", applicable law for acquisitive as well as for the extinctive prescription, two institutions of different nature, with different results. For the acquisitive prescription, the property right is acquired either by the 30 year possession, and the owner is not bound to justify any title, or by the 10-20 year prescription, if the owner calls upon a title and proved the bona fide (Article 2262-2265). Regarding the liberating prescription, the rule is the 30 year prescription, admitting more exceptions based on the royal decrees of local customs (Article 1304).

Adopted according to the Napoleon Code from 1804, owner Civil Law from 1864 followed the same legal regime regarding the acquisitive and extinctive prescription, regulated in the XX Title, generic called "About Prescription" (Article 1837-1911) ordering some contradictory provisions, with an unclear content which is difficult to determine.

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6 It is not clear how "the perpetual character" justifies the extinctive imprescriptibility of this action, but the same character is not sufficient to justify its imprescriptibility also under acquisitive aspect: "the consequence would impose for the claim action not to be paralyzed by calling upon the acquisitive prescription". See G Boroi, Drept civil, partea generală [Civil Law, General Part], II Edition, Publishing House, page 273.

7 See C. Birsan, M. Gaiţă, M.M. Pivniceru - Civil Law. Real rights , European Institute, Iasi, 1997, page 132. There are opinions according to which the movable recovery action is extinctively imprescriptible, as according to the continuous aspect, no distinction can be made between the real estate property right and the movale property right (Supreme Court Civil Section, ordinance no. 1447/1982 in C.D / 1982, page 13; Stătescu, C. Birsan, Civil Law. Drepturile reale [Real rights] University in Bucharest, 1988, p. 208).

8 In the old Roman Law (The Law of the 12 Tables) there was only the possibility of acquiring by acquisitive prescription of a property over a good under the provision of the uninterrupted use for a year, if it has been movable and of two years in case it was immovable. Regarding the actions in court, they were imprescriptible, perpetual (actiones perpetue).

9 Unlike acquisitive prescription, the extinctive prescription was harder to admit, as the duties were extinguished by using the requested forms for the symmetry principle and not by their reaching the term, according to the addendum "ad tempus debesi non potest". The consul was the one who created the magistrate actions imprescriptible within a period of one year (their imprescriptibility within a year resulted from the fact the powers of the magistrates lasted only one year), referred to as actiones temporales - see E. Molea -Drept roman [Roman Law], Press Mihaela S.R.L. Publishing House, Bucharest 1999, page 204-205. Subsequently, in the Roman classic law, the real actions related to the provincial properties were subject to a 10 year prescription inter praeentes (when the plaintiff and the defendant lived in the same town) and to a 20 year prescription inter absentes (when the parties lived in separate provinces). As the term is longer than the one applied to the praetorian action, it has been named longum tempus, and thus the name longi temporis praescriptio. In the year 424 A.D. through the reform of Honorius and Teodosius the 30 year prescription was introduced. As this is the longest term it is referred to as longissimum tempus, from here also longissimi temporis praescriptio. The following represented exceptions: the actions of churches and philanthropy residences - actio hypothecaria - against the debtor and its ineritants and the actions submitted by the emperor, imprescriptible within a period of 40 years; the action of repeating the debt payment resulted from prohibited games, in 50 years; praetorian actions, within one year; actio redhibitoria, in 6 months; and the royal treasury's debts remain imprescriptible.

10 The reform initiated by Theodosius the 2nd was completed by Justinian, who in 531 A.D decided that the name usucapio is to be maintained for the movable goods' acquisitive prescription in a period of 3 years. As for the real estate field, under the name of praescriptio two acquisitive prescriptions have been adopted: longi temporis praescriptio (ordinary acquisitive prescription of 10-20 years) and longissimi temporis praescriptio (extraordinary 30 year acquisitive prescription).
In 1958, the institution of extinctive prescription knew substantial modifications, new rules and principles, foreign to the Civil Law, the entire regulation in the field being subject to the Ordinance no. 167/1958 regarding extinctive prescription. Considered as a true “revolution” regarding the old regulation, the new normative document left outside the new regulation the extinctive prescription of the main real rights. The provisions of Article 21 from the Ordinance, that as we have seen, exclude its application on the action right regarding property right and its dismemberments, underlaid the opinion of the complete expulsion of the incidence pertaining to the Ordinance no. 167/1958 in the real rights field, the extinctive prescription of the real rights will be subject to a new regulation12, but also the opinion according to which the necessity of correlating this normative document with the provisions of the Civil Law 13 was necessary. So, the prescription periods both in the field of acquisitive prescription and prescription of real actions, referred to by the Article 1890 Civil Law, continue to be the ones included in the Civil Law.

3. Brief Consideration on the 30 Year Period Foreseen by Article 1890 Civil Law.

In a general wording, liable to various interpretations due to these reasons, Article 1890 Civil Law, declares as prescriptible in a term of 30 years “all actions, both real and personal that the law did not declare as non-prescriptible and for which no prescription term was established... without that the one calling upon this prescription to be bound to issue a title and to be accused of mala fide”.

Due to the adverse elaboration, the doctrine raised the problem of the legal nature for the 30 years period in the sense of an extinctive or acquisitive prescription. The text of law referring in terminis to the real and personal actions prescribed in 30 years and taking into consideration the fact that it is not possible for a real action to be acquired by extensive possession (only the goods, rights are liable to acquisitive prescription), the 30 year term can be only of extensive prescription. A first conclusion would be that Article 1890 Civil Law regulates a period of extinctive prescription. But the provisions of the second thesis from the Article 1890 Civil Law, according to which “...they will be prescribed in 30 years, and the person calling upon this prescription will not be bound to issue any title and without being accused of mala fide” combined with the provisions of the Article 1890 Civil Law, that regarding acquisitive prescription of 10-20 years regulates that the one calling upon acquisitive prescription must be grounded on a just title and to be of bona fide, lead to the conclusion that the 30 year term is exclusively an acquisitive prescription period. The doctrine pleaded that Article 1890 Civil Law is not the place for extinctive prescription but for the acquisitive prescription of 30 years14.

The explanation of the apparent contradiction is one of historical nature:

• First of all, in the classical doctrine, the term of “action” is synonymous with the one of “subjective right” the action being nothing other than the ‘subjective right in its dynamic state15.

• Second of all, if in the sense of the Code of Napoleon from 1804 and implicitly of the Romanian Civil Law from 1864, the terms of ‘action’ and ‘subjective right’ are synonymous, the notion ‘all actions, both real and personal’ of Article 1890 Civil Law, must be understood as ‘all rights and actions, both real and personal’. The term of action must be used with a wide range of significance, this being the only manner to explain the incidence of Article 1890 Civil Law in the matter of acquisitive prescription, where only the right and not the action subject to acquisitive prescription 16.

• Third of all, if the expression ‘real and personal actions’ is understood as ‘real and personal rights’, especially that the term ‘prescription’, incident in Article 1890 Civil Law must be understood with a double significance, both by long term extinctive and acquisitive prescription (30 years acquisitive prescription).

• Fourth of all, the 30 year term is a general term, with double legal nature, based on logical interpretation considerations, as the text does not make a difference and ubi lex non distinguat, nec nos distinguere debemus.

• Also, finally, taking into consideration the provisions of Article 21 from the Decree no. 167/1958 stating that “as the present decree does not apply to the action right regarding the property, usufruct, use,

11M. Nicolae – op. cit. page 25. The doctrine considered the union under the same regulation of the acquisitive and of the extinctive prescription to be wrong, even if they have common elements. Furthermore, from the educational point of view, the acquisitive prescription represents a manner to acquire property, being object of study within the subject Real Rights, and the extinctive prescription under the subject Duties, as a matter extinguishing them.


13M. Nicolae – op. cit. page 27. The problem is treated as a simple question of legal harmonization and not of legal nature of the extinctive prescription determined but the nature of the civil subjective rights. So, the legal provisions regarding the action right having as object the property right, usufruct, use, occupancy, servitude, superficies, have remained “complete and applicable”, establishing a prescription period longer than the 3 year one foreseen by the Ordinance no. 167/1958, respectively the 30 year term (Article 1890 Civil Law).


15See V. and N. Em. Antonescu - Prescripția în dreptul civil [Prescription in Civil Law], Bucharest, Romania Noua Publishing House, page 150, note 1 – “Article 1890 says actions; it is clear that this notion was understood by the one of law itself, the action being only the right put in motion”.

16The acquisition of the real right by acquisitive prescription (usucapio), is established by a suit.
occupation, servitude and superficies right", as well as the lack of a special extinctive prescription period in the Civil Law, it results that the for the real actions extinctive prescriptible the provisions of Article 1890 are applicable, resulting the general character of the 30 year period.

In conclusion, the provisions of Article 1890 Civil Law must be interpreted in the sense that 'all rights and actions, both real as well as personal, which the law did not declare as non prescribable and for which no prescription period was established, will be prescribed (extinguished or acquired) in 30 years, and the person calling upon this prescription will not be bound to issue any title and he/she cannot be accused of mala fide”

4. Action of Recovery and the 30 Year Period Foreseen by Article 1890 Civil Law. Doctrinaire and Jurisprudential Controversy

The prescribable or imprescriptible character of the recovery action has permanently been the subject of controversy within the doctrine and well as in the legal practice. Reported to the provisions of Article 1890 Civil Law, declaring as prescribable within a 30 year period, all real actions the law did not declare as non-prescribable, without making a difference between their movable or immovable object, and in the conditions of the absence de lege lata of a text which would expressly and differently regulate it, the 30 year extinctive prescription will be applied with certain nuances in actions of claim.

4.1. Action of Property Recovery. Imprescriptibility. Constantly, the doctrine and jurisprudence sustained that Article 1890 Civil Law is not applied to the property recovery action grounded on the private property right. The conclusion is based on the idea of property right continuity according to which no matter the time gone by from the non-exertion, the property is not cancelled by lack of use. So, the owner cannot lose its right merely by non-exertion, no matter how long its passivity lasts. The lack of action from the deprived owner, who did not claim the property within a period of 30 years, will not determine the cancellation of his/her right to exercise the action in the future. With all this, although imprescriptible under extinctive considerations, the action of recovery could be frozen if the current owner of the good calls upon the acquisition of property by usucapio or acquisitive prescription, in his/her favor.

In supporting the property recovery action, the specialty literature raised the problem of the legal condition of the asset, taking into consideration the fact that the recovery action would be cancelled by extinctive prescription, and that the current owner did not apply the acquisitive prescription. As the owner looses the possibility to claim it and in the absence of an acquisitive position, the asset will become res nullis (asset without owner), and as a consequence, according to Article 646 Civil Law, it will pass under the property of the state. Furthermore, the solution of property recovery action's imprescriptibility was also imposed due to equity considerations, otherwise by fulfillment of the prescription term and penalty applied on the non-diligent owner, the usurper would continue to freely possess the asset.

Reported to the express provisions of Article 1890 Civil Law, the solution of the property recovery action's imprescriptibility was sometimes, not without reason, challenged in the sense that, in lack of an explicit text, such derogation from the rule instituted by Article 1890 cannot be possible. With all this, even the authors who have their reserves regarding the imprescriptibility theses accept that the traditional solution is the right way to follow.

In conclusion, the bereaved owner may lose the property right over an immovable asset if another one acquired it by acquisitive prescription. For a change, he/she can not lose the asset as effect of extinctive prescriptible the recovery action, as it is continuous just as the property right that is not cancelled by lack of use.

17 See M. Nicolae – op. cit. page 384.
20 In the same respect the legal practice in the field also states: Ordinance no. 539/4.07.1953 in Culegere de decizii a Tribunalului Suprem 1952-1954 [Collection of Decisions of the Supreme Court 1952-1954] Volume I, page 143 (... that the fact that the property cannot be cancelled by lack of use is of priciple, the owner cannot lose its right merely by not exercising it. No matter how long the owner's passivity, he/she is not declined of the right to claim the asset, even if more than 30 years have gone by. If the property does not loose the right to claim by the extinctive prescription foreseen under Article 1890 Civil Code, it looses the property if another one has acquired it by acquisitive prescription). With the same motivation the Ordinance no. 392/5.03.1986 of the Supreme Court Civil Section, should also be regarded in ARD no. 12/1986.
21 For further details see C. Hamangiu, I. R. Bălănescu, Al. Băicoianu - op. cit., page 71.
22 C. Bîrsan, M. Gaiță, M.M. Pivniceru – op. cit. page. 123 - According to Article 1890 Civil Law, as real action, the action of recovery should be prescriptible within a period of 30 years. We say it should, as starting from the idea of property right continuity and that this right is not lost by lack of use, all specialty literature and legal practice in the field admit that the action of recovery is imprescriptible. In the same respect C. Oprișan – Petitory Actions, in The Right no. 9-12/1990, page 101; P. M. Cosmovici – Drept civil [Civil Law] Introducere in dreptul civil [Introduction in the Civil Law], All Publishing House, Bucharest, 1996, page 54.
4.2. Action of Recovery of Movable Assets

Regarding the movable asset recovery, the Civil Law dedicated a differential legal regime in Article 1909.

4.2.1. Incidence of Article 1909 paragraph 1 Civil Law.

The provisions of Article 1909 paragraph 1 Civil Law foresee that "the movable assets are prescribed by their possession and the passage of time is not required", creates in favor of the owner an absolute property presumption - juris et de jure - which makes the claim of the movable asset almost impossible. The mere fact of the ownership of a movable asset has the value of a property title. Article 1909 paragraph 1 can be called upon only by the third party of bona fide of the asset from an uncertain owner, to whom the real owner has entrusted willingly. In a possible action of recovery, initiated by the owner, the possessor of the movable asset, by proving only the fact of possession, takes advantage of the property presumption. So, the law giver, between the interest of the owner who willingly gave up his/her good and the interests of the acquirer that dealt with an uncertain possessor, believing that he/she is the owner, grants legal protection to the bona fide owner.

4.2.2. Incidence of Article 1909 paragraph 2 Civil Law.

In an exceptional manner, Article 1909 paragraph 2 Civil Law, admits the recovery action in case of lost or stolen goods, ordering the following: "the one who lost or from whom an asset was stolen, can claim it, within a period of three years, from the day in which it was stolen, from the person finding it, appealing against the one from whom it has it". To the extent to which the goods exited the owner's possession without his/her will, by theft, robbery, piracy loss as a consequence of fortuitous case or act of God, their claim by an owner is possible, but the action is exercised according to different rules, as the asset is under the possession of a bona fide third party acquired from the thief or finder or it is found even at the thief, founder or mala fide third party.

In the case of claiming the good from the bona fide owner the provisions of Article 1909 paragraph 2 Civil Law are applied, allowing the owner to exercise the action within a period of 3 years, calculated from the date of loss or theft. According to the doctrine majority, the period foreseen under Article 1909 paragraph 2 is foreseen as degradation one, and a consequence, if during this period no claim action is submitted, the property right of the initial owner is lost. On the entire duration of this period, the application of the provisions under Article 1909, paragraph 1 Civil Law is suspended, regarding the stolen or lost assets and in the bona fide possession of the third party, and upon its fulfillment, the bona fide owner becomes the owner. We consider that, in this case also the recovery action of the bereaved owner should be imprescriptible, will the possibility to freeze it by the asset's acquirer by calling upon the bona fide protection principle. So, he/she becomes owner not by virtue of fulfilling the decension period, but as effect of the bona fide and of the rightful appearance validity. The provisions of bona fide must exist in the moment of the asset's purchase, and if subsequently the third party becomes of mala fide, is not relevant under this aspect.

4.2.3. Incidence of Article 1890 Civil Law. Imprescriptibility

In the case of the movable recovery of the asset from the mala fide owner, from the thief or founder, so outside the case foreseen by Article 1909 paragraph 2 Civil Law, the imprescriptibility thesis of such an action was supporting, calling upon the provisions of Article 1890 Civil Law. It was considered, that in lack of a special period, foreseen by law, the recovery action of the movable asset is prescribed in a general term of 30 years, foreseen by Article 1890 Civil Law regarding real rights, motivating that, if it was admitted that regarding movable assets, in lack of some special provisions, the recovery action would be imprescriptible, special protection would be granted for the movable real rights, which would argue against the spirit of the Civil Law, based on the privilege granted by real estate rights, of a much higher value.

Starting from a famous case in France, the jurisprudence and doctrine created a second opinion based on the imprescriptibility of movable recovery action. So, beginning with 1982, the practice of the supreme court...
abandoned the distinction made in the field of extinctive prescription between the action of real estate recovery and the one of movable recovery. No matter if a movable or immovable asset is claimed, the action is imprescriptible as the property is not cancelled by lack of use. „The difference between the real estate and the movable asset's rights, under the aspect of the actions' imprescriptibility regarding the first rights and of the actions' prescriptibility in case of other rights, is in fact fallacious, as no legal provision makes this kind of differentiation with various consequences under the aspect of extinctive prescription. In fact, no matter if a movable or immovable good is claimed, the right for action is imprescriptible, because the property is not cancelled by lack of use. The action for recovery is inefficient only in the case in which the acquisition of the property right by acquisitive prescription is opposed by the plaintiff, in the cases and provisions of the law, under this aspect existing differences according to the quality of the goods as immovable or movable assets in the litigation”.

The practice solution was embraced by the specialty literature, that starting from the premises that the property is not cancelled by lack of use, considered that no matter if a movable or immovable asset is claimed, the right of action is imprescriptible.

Also, since the recovery action protects the property right, the difference of legal regime is not justified: imprescriptible if it has as object a real estate, respectively prescriptible when referring to a movable asset. Also, there is no reason, that aside from the exception situation regulated by Article 1909 Civil Law, for the movable property right not to be applied the same solution of imprescriptibility deduced from the absolute character and the continuous character of the property right, no matter the nature of its object.

On the other hand, reported to the prescriptibility of the movable assets recovery action from the mala fide possessor, thief or founder and to the fact that the majority of the assets in the patrimony of a physical entity are movable, among which high value objects can also be found, it was said that it would be unfair for the thief to be able to acquire, after 30 years, an undisputable property right, resulting from an offence.

Currently, the imprescriptibility thesis of the movable action of recovery gains more and more territory.

The option for this last point of view is based on the following arguments:

- Article 18902 Civil Law, refers to ‘all actions both real ...’, without distinguishing the movable and immovable goods and having the same reason, the movable action of recovery is imprescriptible just as the immovable one (ubi eadem est ratio, eadem solutio esse debet);
- no legal provisions makes a difference under the aspect if extinctive prescription or ubi lex non distinguit, nec nos distinguere debemus.

Although de lege lata there is no legal text dedicating this solution as one with principle character, the supporters of the recovery action's imprescriptibility, no matter its object have cited the Article 2 Paragraph 2, from the Law no. 213/1998 regarding public property and its legal regime, ordering that: „the goods taken over by the state without valid title, including the ones obtained by the consent vitiation, can be claimed by the former

25 In the case of the religious Congregation of Saint Viateur, it was decided that, due to the fact that this congregation had no legal entity, could not be the donor of some assets. The problem is raised if the donor’s family has lost after 30 year (term foreseen by Article 2262 French Law, equivalent of the Article 1890 Civil Law), property by lack of use. By a principle decision, the Court of Cassation showed that the rules of extinctive prescription are no applicable to the action for recovery - Cas. Fr. May 5th 1879, D1880.1.143 cited by L. Harosa in Discussions Regarding Possession as Manner of Acquiring the Property Right on Movable Assets in SUBB no. 1/2001, page 50


28 In a recovery action having as object a number of 482 gold coins in the possession of the Romanian State by effect of executing of a complementary punishment pardoned in 1959, it was decided that the action is imprescriptible, resolution deduced from the provisions of Article 21 from the Ordinance 167/1958 and from the principle according to which the property is lost by lack of use only in the cases foreseen by law (Ordinance no. 1899/2000 of the Supreme Court of Justice, unpublished; in the sense respect the Ordinance no. 2990 of the Supreme Court of Justice, unpublished, in P. Perju Civil Law Matter and Civil Process Law in the Practice of the Civil Section of the Supreme Court of Justice, in RRD no. 4/2001, page 178-179).


30 Based on the same analogy argument, in a 'dearing' opinion it is stated: 'the fact that no distinction can be made between the movable and immovable assets is rigurous, as the law granted them the same treatment under the aspect of the prescription term. The Article 1890 Civil Law is in the sense of the 30 year prescription for both recovery cases, and the traditional solution - but not legal - presupposed by doctrine and jurisprudence, takes into consideration only the real estate property right, given the stability of the real estate situation and the certitude from the legal trade for real estate" (C. Bărsan, M. Gaiţă, M.M. Pivniceru, op.cit. page 131-132).
owners or by its successors, if they are not subject to some special separation laws." As the text does not make a clear difference, the goods are understood as movable as well as immovable assets.

5. Conclusions

As for us, we share the point of view in the sense that the recovery action grounded on private property is extensively imprescriptible, no matter its movable or immovable nature, according to the addendum ubi eadem est ratio, eadem solutio esse debet. Since the property rights is continuous and is not cancelled due to lack of use, as a consequence and the action by which it is defended must be imprescriptible, without making a difference between a movable or immovable asset. De lege ferenda the necessity of a regulation in this respect is needed. The modification project of the Civil Law attempts to solve this delicate problem, stating in the principle wording of Article 1940 that "the right of action is imprescriptible ... any time by its nature or object if the protected subjective right, its exercise can not be limited in time"

Since the new regulations still delay, currently, interpreted in this spirit and not its wording, Article 1890 Civil Law, is applied to any real susceptible rights of cancellation, or, according to the case by acquisition by prescription. As the property right is not cancelled by lack of use, the recovery action also cannot be cancelled by the simple fulfillment of the extinctive prescription term, but only indirectly by effect of acquisitive prescription. In this manner, only by acquisitive prescription, Article 1890 Civil Law, extends its effects on the recovery action, in the sense that the 30 year period is acquisitive for the person resorting to acquisitive prescription for the owner of the asset subject to the acquisitive prescription. As a consequence, the right to recover the property is cancelled in the case of prescription only together with the property itself, by effect of acquiring the good as a consequence of acquisitive prescription, without making a difference in its nature. Regarded in itself, the recovery action must be extinctively imprescriptible no matter its object. And this, how much more so, due to the community development, the movable assets no longer play a minor role in the civil circuit, and the value criteria, used by the creators of the Civil Law in the real estate regime regulation, is no longer current.