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THE INSTITUTION OF ACQUISITIVE PRESCRIPTION IN THE LEGAL ORDERS OF KYRGYZSTAN AND KAZAKHSTAN: ISSUES OF LEGAL QUALIFICATION AND PATHWAYS TO UNIFICATION

Abstract

This article, based on a comparative legal analysis, examines the conditions for the legal qualification of prescriptive possession and the conflict-of-law aspects of calculating the periods of acquisitive prescription in the legal systems of the Kyrgyz Republic and the Republic of Kazakhstan. The author identifies normative ambiguities inherent in Article 265 of the Civil Code of the Kyrgyz Republic, particularly concerning the linkage of the commencement of the acquisitive prescription period to the subjective moment of the owner's awareness of the violation of their right. Using formal-legal and systemic methods, the study critically evaluates the criteria of good faith, openness, and continuity of possession, which lack statutory definitions in Kyrgyz legislation. Particular attention is paid to procedural guarantees for the rights of interested parties in disputes concerning the recognition of ownership by virtue of acquisitive prescription.

Drawing on the Kazakhstani experience (Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3), the author proposes pathways for the unification of law enforcement practice, including clarification of the substantive elements of prescriptive possession, determination of the objective moment for the commencement of the limitation period, and improvement of procedural mechanisms for involving all interested parties. The article concludes that the adoption of certain elements of the Kazakhstani model is necessary to enhance the effectiveness of the institution of acquisitive prescription in the Kyrgyz Republic.

Keywords: acquisitive prescription, good faith possession, limitation period, comparative legal analysis, judicial interpretation, legal certainty

Introduction

The institution of acquisitive prescription occupies a special place within the system of property law, serving as a classical legal-technical mechanism designed to resolve the fundamental contradiction between the formal attribution of ownership (title) and the factual control over a thing (possession). As one of the oldest modes of acquiring rights, it continues to play a crucial role in modern legal systems by ensuring the stability of civil circulation, legitimizing long-standing factual relationships, and upholding the principle of legal certainty.

At the same time, the effectiveness of this institution directly depends on the degree of clarity of its normative components – namely, the conditions of good faith, openness, and continuity of possession, as well as the precision of legal mechanisms governing the calculation of statutory time limits.

In the Kyrgyz Republic (hereinafter – the KR), the legal framework of acquisitive prescription is enshrined in Article 265 of the Civil Code of the Kyrgyz Republic¹. Despite the apparent completeness of the legislative formula, an analysis of doctrinal sources and law enforcement practice reveals significant gaps and evaluative uncertainties that hinder the formation of a uniform judicial practice. Particular complexity arises in relation to the correlation between acquisitive prescription and limitation periods, as well as the substantive content of the criteria of good faith and openness of possession, which – due to the absence of statutory definitions and authoritative judicial interpretations – are often subject to inconsistent interpretation.

¹ Гражданский кодекс Кыргызской Республики, Часть первая от 08.05.1996 № 16. URL: <https://cbd.minjust.gov.kg/4-589/edition/506572/ru> (дата обращения: 15.10.2025).

Bridging the identified theoretical and practical gaps is possible through recourse to comparative legal experience. In this regard, the legal regulation of the Republic of Kazakhstan (hereinafter – the RK) appears particularly illustrative, where the institution of acquisitive prescription (Article 240 of the Civil Code of the RK)¹ has received not only codified recognition but also detailed interpretation in acts of judicial norm-setting – specifically, in the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 20 April 2006 “On the Practice of Judicial Consideration of Disputes Concerning Rights to Housing Abandoned by the Owner” [1].

A systemic analysis of the Kazakhstani approach makes it possible not only to identify deficiencies in the legal regulation of Kyrgyzstan but also to outline potential avenues for their resolution, taking into account the shared historical and legal traditions and the structural similarity of the legislative models of the two states.

The purpose of this study is to conduct a comprehensive theoretical and applied analysis of the conditions for the legal qualification of prescriptive possession and the conflict-of-law aspects of calculating the periods of acquisitive prescription in the legal systems of the Kyrgyz Republic and the Republic of Kazakhstan.

The achievement of this objective entails addressing the following tasks: identifying normative uncertainties inherent in Article 265 of the Civil Code of the Kyrgyz Republic; conducting a comparative legal analysis of the criteria of good faith, openness, and continuity of possession; assessing procedural guarantees for the rights of interested parties in judicial disputes concerning the recognition of ownership by virtue of acquisitive prescription; and formulating recommendations aimed at unifying law enforcement practice in the field under study.

Materials and Methods

The study was conducted using comparative legal and formal-legal methods, as well as the method of systemic interpretation of legal norms. The normative framework of the research includes: the Civil Code of the Kyrgyz Republic (Article 265)²; the Civil Code of the Republic of Kazakhstan (Article 240, as well as Articles 260–265 governing vindication)³; the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 20 April 2006 “On the Practice of Judicial Consideration of Disputes Concerning Rights to Housing Abandoned by the Owner” (as amended)⁴; the scientific and practical commentary on the Civil Code of the Kyrgyz Republic [2, p. 321]; doctrinal works, including the article by S.V. Skryabin “Limitation Periods and Acquisitive Prescription”⁵; materials of judicial practice of the Kyrgyz Republic, as well as the positions of the Supreme Court of the Russian Federation⁶ insofar as they fill gaps in the interpretation of the conditions of prescriptive possession.

Results and Discussion

1. The Legal Nature of the Period of Acquisitive Prescription and the Problem of the Correlation between Limitation Periods and Acquisitive Prescription

The institution of acquisitive prescription is traditionally regarded in civil law doctrine as a legitimate mode of transferring ownership, based on the fact of long-term, good faith, and open possession. Unlike limitation periods, which restrict the possibility of enforcing a violated right within a certain time frame, acquisitive prescription performs a positive function: it transforms the factual state of possession into a legal title, thereby eliminating uncertainty in the legal status of property. The effectiveness of this institution directly depends on two key factors: first, the clarity in defining the object to which the regime of prescriptive possession may be applied; and second, the precision of the normative regulation governing the conditions and the procedure for calculating the relevant periods.

With regard to the first factor, doctrine rightly raises the question of the limits of the application of acquisitive prescription. As noted by A.V. Lisachenko [3], immovable property in this context should not

¹ Кодекс Республики Казахстан от 27 декабря 1994 года № 268-ХІІІ «Гражданский кодекс Республики Казахстан (Общая часть)». URL: <https://adilet.zan.kz/rus/docs/K940001000> (дата обращения: 15.10.2025).

² Гражданский кодекс Кыргызской Республики, Часть первая от 08.05.1996 № 16. URL: <https://cbd.minjust.gov.kg/4-589/edition/506572/ru> (дата обращения: 15.10.2025).

³ Кодекс Республики Казахстан от 27 декабря 1994 года № 268-ХІІІ «Гражданский кодекс Республики Казахстан (Общая часть)». URL: <https://adilet.zan.kz/rus/docs/K940001000> (дата обращения: 15.10.2025).

⁴ Нормативное постановление Верховного Суда Республики Казахстан от 20 апреля 2006 года № 3 «О практике рассмотрения судами споров о праве на жилище, оставленное собственником» (с изменениями и дополнениями). URL: <https://adilet.zan.kz/rus/docs/P060000035> (дата обращения: 15.10.2025).

⁵ Скрыбин С.В. Исковая и приобретательная давность. URL: https://prg.kz/document/?doc_id=30007313&pos=86;109 (дата обращения: 18.10.2025).

⁶ Постановление Пленума Верховного Суда Российской Федерации и Пленума Высшего Арбитражного Суда Российской Федерации от 29.04.2010 г. № 10/22 «О некоторых вопросах, возникающих в судебной практике при разрешении споров, связанных с защитой права собственности и других вещных прав». URL: <http://www.rg.ru/2010/05/21/prava-dok.html> (дата обращения: 13.11.2025).

be understood as any object in respect of which the law does not exclude the possibility of acquiring ownership by prescription. By way of illustration, N.V. Karlova and L.Yu. Mikheeva [4] emphasize that an имущественный комплекс (property complex), which includes things, claims, and debts associated with the property, cannot be acquired through acquisitive prescription.

The second factor – the clarity of normative regulation – is directly linked to the analysis of positive law. The legal framework of acquisitive prescription in the Kyrgyz Republic is enshrined in Article 265 of the Civil Code of the Kyrgyz Republic. An analysis of this provision suggests that the legislator has adopted a formal-logical model that integrates all requirements (good faith, openness, and continuity) into a unified system that must be observed throughout the entire period of possession. According to paragraph 1 of Article 265 of the Civil Code of the Kyrgyz Republic, possession of immovable property must last for 15 years, and of movable property for 5 years¹. At first glance, these periods appear to be sufficiently definite and adequate for transforming factual possession into a right of ownership.

However, the key difficulty arises when comparing paragraph 1 with paragraph 4 of Article 265 of the Civil Code of the Kyrgyz Republic, according to which the period of acquisitive prescription begins to run only after the expiration of the limitation period for vindicatory claims of the owner or another entitled person. This provision introduces an additional element into the structure of acquisitive prescription – namely, a linkage to a subjective moment that determines the commencement of the limitation period.

Pursuant to Article 180 of the Civil Code of the Kyrgyz Republic, the limitation period begins from the day when a person knew or ought to have known of the violation of their right. Since the determination of this moment in each particular case is inherently connected with the assessment of factual circumstances, the objective certainty of the starting point for the period of acquisitive prescription is effectively lost. As rightly noted by the authors of the scientific and practical commentary on the Civil Code of the Kyrgyz Republic, possession for the purposes of acquisitive prescription must, in practice, last no less than 8 years for movable property and 18 years for immovable property [2, p. 321]. However, even these figures are not constant, as the duration of the limitation period may vary depending on when the court determines that the owner knew or should have known of the violation.

Such a legislative approach gives rise to a number of negative consequences. First, it introduces an element of uncertainty into civil circulation, since a good faith possessor, even when complying with all required conditions, cannot predict with a sufficient degree of certainty the moment at which ownership will arise. Second, it conflates two fundamentally distinct legal institutions – limitation periods, which are aimed at the protection of rights, and acquisitive prescription, which is aimed at stabilizing factual situations. As convincingly argued by S.V. Skryabin, limitation periods and acquisitive prescription differ in their legal nature: the former constitutes a period for the protection of a violated right, entailing the loss of the possibility of its compulsory enforcement, whereas the latter is a period upon the expiration of which factual possession, subject to the fulfillment of established conditions, is transformed into a right of ownership². The conflation of these institutions within a single provision leads to a legal conflict that cannot be resolved within the existing statutory framework.

Third, the linkage to the moment of the owner's awareness renders the running of the period of acquisitive prescription dependent on circumstances pertaining to the internal sphere of a person who does not participate in the process of prescriptive possession. This contradicts the principle of legal certainty and creates preconditions for potential abuse.

It is noteworthy that a similar provision is also enshrined in the Civil Code of the Republic of Kazakhstan: paragraph 4 of Article 240 of the Civil Code of the Republic of Kazakhstan likewise stipulates that the period of acquisitive prescription does not commence earlier than the expiration of the limitation period for the relevant claims³. However, Kazakhstani judicial practice and legal doctrine attribute a different meaning to this provision, effectively overcoming the uncertainty embedded within it. In paragraph 11 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 20 April 2006 "On the Practice of Judicial Consideration of Disputes Concerning Rights to Housing Abandoned by the Owner," it is clarified that, with respect to property held by a person from whose possession it could have been reclaimed under Articles 260–265 of the Civil Code of the Republic of Kazakhstan, the period of acquisitive prescription commences from the moment the property is taken into possession⁴. Thus, the Supreme Court of the Republic of Kazakhstan rejected the linkage

¹ Гражданский кодекс Кыргызской Республики, Часть первая от 08.05.1996 № 16. URL: <https://cbd.minjust.gov.kg/4-589/edition/506572/ru> (дата обращения: 15.10.2025).

² Скрыбин С.В. Исковая и приобретательная давность. URL: https://prg.kz/document/?doc_id=30007313&pos=86;109. (дата обращения: 18.10.2025).

³ Кодекс Республики Казахстан от 27 декабря 1994 года № 268-III «Гражданский кодекс Республики Казахстан (Общая часть)». URL: <https://adilet.zan.kz/rus/docs/K940001000> (дата обращения: 15.10.2025).

⁴ Нормативное постановление Верховного Суда Республики Казахстан от 20 апреля 2006 года № 3 «О практике рассмотрения судами споров о праве на жилище, оставленное собственником» (с изменениями и дополнениями). URL: <https://adilet.zan.kz/rus/docs/>

to the subjective moment of the owner's awareness, establishing an objective criterion that can be verified and substantiated by evidence. In Kazakhstani doctrine, this position has received support: S.V. Skryabin, criticizing paragraph 4 of Article 240 of the Civil Code of the Republic of Kazakhstan, proposes either to extend the rule of non-application of limitation periods to vindicatory claims or to equate the limitation periods for the protection of property rights with those of acquisitive prescription. Although the legislation of the RK formally retains the conflictual provision, judicial interpretation effectively neutralizes its negative consequences, allowing the period of acquisitive prescription to be calculated objectively and predictably.

A comparative analysis of the approaches in Kyrgyzstan and Kazakhstan leads to the conclusion that the problem lies not so much in the mere existence of paragraph 4 of Article 265 of the Civil Code of the Kyrgyz Republic, but in the absence of authoritative judicial interpretation that would determine the moment of commencement of the period of acquisitive prescription. In Kyrgyzstan, this uncertainty persists and has tangible negative consequences, as reflected in judicial practice. The procedure for calculating the periods results in courts either erroneously recognizing ownership in favor of a person who has not complied with all conditions, or, conversely, denying ownership to a good faith possessor who has effectively fulfilled all requirements, due to the impossibility of establishing the starting point of the period. In turn, persons whose rights are affected by the court's decision (e.g., the heirs of the owner) are forced to subsequently challenge judicial acts, undermining the stability of civil circulation and the principle of legal certainty.

Accordingly, a theoretically sound and practically feasible approach appears to be one in which the period of acquisitive prescription is determined by an objective moment – the commencement of factual possession—rather than the subjective awareness of the owner. Such an approach corresponds to the nature of acquisitive prescription as an institution that stabilizes factual relations and does not place the good faith possessor at the mercy of circumstances pertaining to the title owner. Adopting the Kazakhstani experience of judicial interpretation could contribute to eliminating uncertainty and forming a uniform practice in the application of Article 265 of the Civil Code of the Kyrgyz Republic.

2. The Relationship between the Conditions of Prescriptive Possession: Good Faith, Openness, and Possession as One's Own

In order for possession to be qualified as prescriptive and serve as a basis for acquiring ownership, the law (paragraph 1 of Article 265 of the Civil Code of the Kyrgyz Republic) requires that it be in good faith, open, and continuous. However, neither the Civil Code of the Kyrgyz Republic nor other normative acts clarify the substantive meaning of these conditions. As rightly noted in the literature, some scholars do not consider good faith to be a necessary element at all¹, or contend that it is relevant only for certain categories of property². The absence of statutory definitions creates a risk of arbitrary judicial interpretation, as is confirmed by the examples found in the judicial practice of the Kyrgyz Republic [1, p. 37].

In this regard, attention should be drawn to the approach formulated in the Plenary Resolution of the Supreme Court of the Russian Federation, which the author of the original text cites. According to this approach, good faith possession is excluded if the acquisition of the property occurred as a result of an unlawful act or if the property cannot be the subject of acquisitive prescription (for example, an unauthorized construction) [1, p. 37]. The authors of the scientific and practical commentary on the Civil Code of the Kyrgyz Republic further note that good faith cannot be recognized as long as the property may be forcibly reclaimed by its lawful owner [2, p. 321].

It can be argued that these clarifications form an internal logic: good faith and openness of possession, as well as the treatment of the property as one's own, are closely interrelated. The failure to satisfy one of these conditions may lead to the failure of the others, which collectively renders it impossible to qualify the possession as prescriptive. At the same time, the question arises regarding the independent significance of the conditions of openness and possession as one's own, since if good faith is violated, these conditions automatically lose their meaning. This circumstance indicates the need for a clearer normative differentiation of these criteria or for the recognition of good faith as the fundamental (integrative) condition.

A comparative analysis with the legislation of the Republic of Kazakhstan shows that in that jurisdiction, the issue of definitions is resolved not at the level of the code, but through judicial interpretation. Paragraph 10 of the Regulatory Resolution of the Supreme Court of the Republic of

[P060000035](#) (дата обращения: 15.10.2025).

¹ Дроздов И.А. К вопросу о добросовестности давностного владельца [Электронный ресурс] // Вестник Высшего Арбитражного Суда Российской Федерации. 2009. № 5. URL: <http://www.szrf.ru/doc.phtml?nb=edition07&issid=2009005000&docid=2> (дата обращения: 15.11.2025);

² Кузьмина И.Д. Отказ от права собственности на объекты недвижимости // Вестник Томского государственного университета. 2003. № 279. URL: <http://cyberleninka.ru/article/n/otkaz-ot-prava-sobstvennosti-na-obekty-nedvizhimosti> (дата обращения: 15.12.2016)

Kazakhstan No. 3 elaborates on the content of each condition with respect to housing relations:

- **Good faith** is interpreted as lawful acquisition of the dwelling as a result of events and actions that are either explicitly recognized by law or do not contradict it, but which have not received proper legal formalization (for example, transfer by the owner without observing the required contractual form);
- **Openness** is manifested in the fact that the person does not conceal their possession, bears the burden of maintaining the property, and pays utility charges;
- **Continuity** is understood as the dwelling remaining in the possession of a single person for the prescribed period without transfer of possession to third parties.

Such clarification, although provided in the context of housing disputes, has general methodological significance for all categories of cases concerning acquisitive prescription. It enables courts to assess factual circumstances consistently and reduces the risk of erroneously qualifying factual possession as prescriptive. In contrast, in the practice of the Kyrgyz Republic, the absence of similar clarifications sometimes leads courts to recognize ownership by acquisitive prescription in favor of a non-titled possessor without properly verifying all conditions, after which the heirs of the owner are forced to restore deadlines through appellate procedures.

3. The Problem of “Suspended” Property and the Consequences of Owner Inaction

An important aspect that goes beyond the formal conditions of acquisitive prescription is the legal fate of property that is actually in the possession of a third party, while the owner, for various reasons, does not reclaim it. Scholars have rightly noted that a situation in which the conditions of acquisitive prescription are not met (for example, due to a lack of good faith) and the owner, for various reasons, cannot or does not wish to exercise a vindictory claim does not contribute to the harmonious development of civil circulation¹. This state of affairs gives rise to a phenomenon conventionally referred to as “suspended” property: the item remains in the factual possession of a person who has no right to it, while the owner loses the ability to reclaim it (due to the expiration of the limitation period, insufficient evidence, or simple inaction), and the prescriptive possessor does not acquire ownership because not all necessary conditions are satisfied.

In this context, doctrinal literature has suggested softening or abandoning certain conditions of acquisitive prescription as a means of addressing the problem of “suspended” property. However, such an approach appears unjustified, as it undermines the essential characteristics of the institution, which is designed specifically to encourage good faith, open, and continuous possession. Moreover, abandoning the conditions of acquisitive prescription could have the opposite effect—legitimizing bad-faith acquisition. As rightly noted in the literature, the owner retains other means of protection besides vindication: self-protection of rights (within the limits permitted by law), recourse to criminal or administrative measures, and the right to dispose of the property, including its alienation. Exercising these options allows the owner to terminate the state of uncertainty without diminishing the conditions of acquisitive prescription.

Particular significance in this context attaches to prolonged inaction by the owner. If the owner, over a period exceeding the legally established term for acquisitive prescription, takes no action to recover the property, such inaction may be interpreted as evidence of abandonment of ownership (*derelictio*). Pursuant to Article 257 of the Civil Code of the Kyrgyz Republic, property abandoned by the owner without the intention to retain ownership may be recognized as ownerless and acquired by other subjects in the prescribed manner. This provision, together with the institution of acquisitive prescription, forms a complementary mechanism that allows property which has effectively exited the sphere of the title owner’s interests to be returned to civil circulation.

A comparative analysis with the legislation of the Republic of Kazakhstan shows that in that jurisdiction this mechanism has received more detailed regulation. According to paragraphs 3 and 4 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 the abandonment of ownership (leaving a dwelling) does not terminate the rights and obligations of the owner until the property is acquired by another person. At the same time, a clear procedure has been established for recognizing property as ownerless: the local executive authority identifies such property, registers it, and, after one year, is entitled to file a claim in court for its recognition as communal property. If the claim is not filed or is denied, the rights of possession, use, and disposition remain with the owner or pass to a third party by virtue of acquisitive prescription. Thus, in Kazakhstan, a coherent system has been created that allows the “suspended” property situation to be resolved through the sequential application of either the rules on ownerless property or the provisions on acquisitive prescription. In contrast, in Kyrgyzstan, although there is a general provision in Article 257 of the Civil Code, there is no comparable detailed procedure for recognizing property as ownerless, which reduces the effectiveness of this mechanism.

¹ Дроздов И.А. К вопросу о добросовестности давностного владельца [Электронный ресурс] // Вестник Высшего Арбитражного Суда Российской Федерации. 2009. № 5. URL: <http://www.szrf.ru/doc.phtml?nb=edition07&issid=2009005000&docid=2> (дата обращения: 15.11.2025);

4. Procedural Guarantees of the Rights of Parties in Cases of Acquisitive Prescription

The practice of adjudicating disputes related to the recognition of ownership through acquisitive prescription shows that procedural deficiencies at the stage of identifying the parties to the proceedings often result in the annulment of court decisions and protracted litigation. As demonstrated by the judicial practice in the Kyrgyz Republic, insufficient examination of the factual circumstances of the case, as well as the failure to involve persons whose rights and interests may be affected by the decision, leads to the erroneous qualification of factual possession as prescriptive, and the court recognizes ownership in favor of a non-titled possessor. Subsequently, persons not included in the proceedings (for example, the heirs of the owner), upon learning of the decision, are forced to file motions to restore procedural deadlines for appellate review and to challenge a judicial act that has already entered into legal force. Such a situation undermines the principles of legal certainty and the stability of judicial decisions, and highlights the need for a stricter approach in determining the circle of participants in the case, as well as a more thorough verification of the factual circumstances that preceded the acquisition of possession.

The issue of ensuring the rights of all interested parties in cases of acquisitive prescription has not only a procedural but also a substantive dimension, since a decision recognizing ownership affects not only the interests of the plaintiff and defendant but also potentially the rights of the title owner, their heirs, and, in cases involving ownerless property, public legal entities.

In this regard, the experience of the Republic of Kazakhstan is illustrative, where this issue is addressed by imperatively instructing courts to verify the circumstances related to the identification of ownerless property and to involve local executive bodies (akimats), as well as municipal and tax authorities, in the proceedings¹. Such a procedural solution ensures the participation of a public element in the dispute, which is particularly important when the property in question may be recognized as ownerless and transferred to communal ownership. Moreover, paragraph 9 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 provides a mechanism for protecting the rights of the owner in cases where the local executive authority disposes of a dwelling that has not been judicially recognized as having entered communal ownership: the owner may demand the return of the dwelling or the provision of an equivalent property. This provision creates an additional procedural safeguard, allowing the owner to restore violated rights even after the property has left their possession as a result of public authority actions.

Thus, the Kazakh approach is distinguished by its systematic nature: it does not merely note the necessity of involving interested parties, but provides detailed regulation of the scope of such persons, their procedural rights, and the consequences of improper inclusion. These procedural guarantees enable a balance of interests among all participants in property relations – the owner, the prescriptive possessor, and the public authority – while minimizing the risk of unlawful or unfounded judicial decisions.

It is argued that it would be beneficial for the Kyrgyz Republic to adopt this experience by supplementing the explanations on the application of Article 265 of the Civil Code of the Kyrgyz Republic with a requirement to involve all persons whose rights may be affected in cases of acquisitive prescription, including local self-government bodies (in relation to property that may be recognized as ownerless), as well as the potential heirs of the owner if the owner does not participate in the proceedings. Only through comprehensive and thorough examination of all circumstances surrounding the acquisition and subsequent factual possession of the property by a non-titled possessor, coupled with the proper determination by the court of the circle of parties involved, can an objective and legally grounded conclusion be drawn regarding the compliance or non-compliance with the conditions of acquisitive prescription. Such an approach would contribute to the formation of consistent judicial practice and strengthen the principle of legal certainty in property relations.

Conclusion

The conducted comparative legal analysis allows the following conclusions to be drawn.

In the Kyrgyz Republic, the statutory regulation of acquisitive prescription (Article 265 of the Civil Code of the Kyrgyz Republic) suffers from uncertainty regarding the determination of the commencement of the prescriptive period, as it is tied to the subjective moment when the owner becomes aware of the violation of their right. In the Republic of Kazakhstan, judicial practice has overcome this uncertainty by establishing that the prescriptive period begins from the moment of actual possession of the property, thereby ensuring objectivity and predictability in law enforcement.

¹ Нормативное постановление Верховного Суда Республики Казахстан от 20 апреля 2006 года № 3 «О практике рассмотрения судами споров о праве на жилище, оставленное собственником» (с изменениями и дополнениями). URL: <https://adilet.zan.kz/rus/docs/P0600000035> (дата обращения: 15.10.2025).

The conditions of good faith, openness, and continuity of possession in Kyrgyzstan lack legal definitions and are not clarified by the highest judicial authority, resulting in inconsistency in judicial practice. The Kazakh experience demonstrates that specifying these criteria in a regulatory resolution of the Supreme Court (even if applied to a specific category of disputes) allows courts to evaluate factual circumstances consistently and reduces the risk of erroneous qualification of possession as prescriptive.

The problem of “suspended” property, which in Kyrgyzstan is addressed primarily through the institution of acquisitive prescription with long terms, is complemented in Kazakhstan by a clear procedure for recognizing property as ownerless and transferring it to communal ownership. This provides additional incentives for owners to act in defense of their rights while simultaneously establishing a legal avenue for acquiring rights to abandoned property.

Procedural guarantees for the rights of parties involved in cases of acquisitive prescription in Kazakhstan are ensured through the mandatory participation of public authorities in the proceedings and detailed regulation of the consequences of property disposition – measures that are absent in the Kyrgyz practice under analysis.

Overall, it can be stated that in order to improve law enforcement in the Kyrgyz Republic, it would be advisable to adopt certain elements of the Kazakh experience: clarifying, at the level of the highest judicial instance, the substantive content of the conditions of acquisitive prescription, specifying the procedure for calculating the prescriptive period, and developing procedural mechanisms that ensure the participation of all interested parties in the adjudication of this category of disputes. Only such a comprehensive approach can make the institution of acquisitive prescription an effective tool for stabilizing civil turnover, rather than a source of legal uncertainty.

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ҚЫРҒЫЗСТАН ЖӘНЕ ҚАЗАҚСТАН ҚҰҚЫҚ ЖҮЙЕСІНДЕГІ ИЕЛЕНУ ҚҰҚЫҒЫНЫҢ МЕРЗІМІ ИНСТИТУТЫ: САРАЛАУ МӘСЕЛЕЛЕР ЖӘНЕ БІРЫҢҒАЙЛАНДЫРУ ЖОЛДАРЫ

Аңдатпа

Мақалада салыстырмалы-құқықтық талдау негізінде Қырғыз Республикасы мен Қазақстан Республикасының құқықтық жүйелерінде иемдеу құқығының ескіру мерзімін саралау шарттары мен оның есептелуіне қатысты қақтығыстық аспектілер зерттелді. Автор Қырғыз Республикасының Азаматтық кодексінің 265-бабында бекітілген нормативтік белгісіздіктерді анықтайды, атап айтқанда, иелену құқығының мерзімінің басталуы мен меншік иесінің құқық бұзылуы туралы хабардар болу субъективті сәтімен байланысын көрсетеді. Формальды-құқықтық және жүйелік

әдістерді пайдалана отырып, Қырғызстан заңнамасында заңды анықтамасы жоқ адалдық, ашықтық және иемденудің үздіксіздігі критерийлері сын тұрғысынан бағаланады. Арнайы назар иемдеу құқығының ақылға қонымды мерзіміне байланысты меншік құқығын тану дауларында мүдделі тұлғалардың құқықтарының процессуалдық кепілдіктеріне аударылды. Қазақстан тәжірибесі негізінде (Қазақстан Республикасы Жоғарғы Сотының Нормативтік қаулысы №3) құқық қолдану практикасын біріздендіру жолдары ұсынылады: иемдеу құқығының ескіру мерзімі шарттарының мазмұнын түсіндіру, мерзімнің басталу объективті сәтін анықтау, барлық мүдделі тұлғаларды тарту бойынша процессуалдық механизмді жетілдіру. Қырғыз Республикасында иемдеу құқығының ескіру мерзімінің тиімділігін арттыру үшін кейбір қазақстандық модель элементтерін қабылдау қажеттігі туралы қорытынды жасалады.

Түйін сөздер: иемдеу құқығының парасатты мерзімі, адал иемдік, талап қою құқығының өтелу мерзімі, салыстырмалы-құқықтық талдау, соттық түсіндірме, құқықтық айқындық

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ИНСТИТУТ ПРИОБРЕТАТЕЛЬНОЙ ДАВНОСТИ В ПРАВОПОРЯДКАХ КЫРГЫЗСТАНА И КАЗАХСТАНА: ПРОБЛЕМЫ КВАЛИФИКАЦИИ И ПУТИ УНИФИКАЦИИ

Аннотация

В статье на основе сравнительно-правового анализа исследуются условия квалификации давностного владения и коллизионные аспекты исчисления сроков приобретательной давности в правовых порядках Кыргызской Республики и Республики Казахстан. Автором выявлены нормативные неопределенности, присущие ст. 265 Гражданского кодекса КР, в частности в части привязки начала течения срока приобретательной давности к субъективному моменту осведомленности собственника о нарушении права. С использованием формально-юридического и системного методов критически оцениваются критерии добросовестности, открытости и непрерывности владения, не имеющие легальной дефиниции в законодательстве Кыргызстана. Особое внимание уделяется процессуальным гарантиям прав заинтересованных лиц в спорах о признании права собственности в силу приобретательной давности. На основе казахстанского опыта (Нормативное постановление Верховного Суда РК № 3) предлагаются пути унификации правоприменительной практики: разъяснение содержания условий давностного владения, определение объективного момента начала течения срока, совершенствование процессуального механизма привлечения всех заинтересованных лиц. Сделан вывод о необходимости восприятия отдельных элементов казахстанской модели для повышения эффективности института приобретательной давности в Кыргызской Республике.

Ключевые слова: приобретательная давность, добросовестное владение, исковая давность, сравнительно-правовой анализ, судебное толкование, правовая определенность