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Acquisition of ownership by acquisitive prescription by the State Treasury or a local government unit in the light of the principle of legality (Article 7 of the Constitution of the Republic of Poland) – contribution to the discussion

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Abstract:

The focus of this article centres on the examination of the implications concerning the assessment of the permissibility of property acquisition by acquisitive prescription by the State Treasury or a local government unit, as derived from Article 7 of the Constitution of the Republic of Poland. Notably, a discernible contradiction exists between this principle and the fundamental nature of property acquisition by acquisitive prescription. The article seeks to construe both Article 172 of the Civil Code (pertaining to the acquisition of ownership of immovable property by acquisitive prescription) and Article 174 of the Civil Code (pertaining to the acquisition of ownership of movable property by acquisitive prescription) in a manner that resolves the aforementioned contradiction.

Consequently, it is imperative to deduce that the Treasury cannot ever possess a thing without a legal basis. Adopting an opposing stance would imply an act devoid of a legal basis, thereby infringing the tenet enshrined in Article 7 of the Constitution. The stipulation in Article 7 of the Constitution necessitates either a refusal to acknowledge such administrative power as possession or an acceptance that the State Treasury's autonomous possession of a thing cannot culminate in an acquisitive prescription. This is because the latter would be tantamount to endorsing conduct in contravention of constitutional standards. Given that the former proposal contravenes the perception of possession as a mere factual state, the latter proposition emerges as the correct interpretation. Thus, Articles 172 and 174 of the Civil Code must be construed in harmony with Article 7 of the Constitution, implying that the State Treasury may not be the entity exercising the acquisitive prescription. An analogous approach must be extended to local government units.

Keywords: acquisitive prescription, State Treasury, principle of legality

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Acquisition of ownership by acquisitive prescription by the State Treasury or a local government unit in the light of the principle of legality (Article 7 of the Polish Constitution) – contribution to the discussion

Abstract:

The subject of this article is to analyze the consequences of rule resulting from art. 7 of the Polish Constitution for the admissibility of acquisition of property by acquisitive prescription by the State Treasury or a local government unit. There is a clear contradiction between this principle and the very essence of acquiring property by prescription. In the article it will be presented an interpretation Art. 172 of the Civil Code (relating to the acquisition of real estate by prescription) and Art. 174 of the Civil Code (relating to the acquisition by prescription of ownership of a movable property) in a way to remove the said contradiction. As a result, it should be assumed that the State Treasury can never possess a thing without a legal basis. The opposite view would mean that it may operate without a legal basis, and thus a breach of the norm under Art. 7 of the Polish Constitution. Art. 7 of the Constitution of the Republic of Poland must mean that either we will never recognize such ownership as possession, or that we believe that the possession of a thing by the State Treasury may never lead to usucapion, as it would sanction behavior contrary to constitutional standards. Since the first solution would infringe the principle of treating possession as only a factual state, the second solution should be regarded as the correct one. Art. 172 of the Civil Code and 174 of the Civil Code should therefore be interpreted in accordance with Art. 7 of the Polish Constitution, and therefore the State Treasury cannot be the subject of acquisitive prescription. The same should be applied to local government units.

Keywords: acquisitive prescription, State Treasury, principle of legalism

1. Introduction

In both legal doctrine and case law, it is universally accepted that the State Treasury and local authorities can gain ownership of property by acquisitive prescription. The core of contention predominantly revolves around classifying specific situations wherein the State Treasury exerts de facto administrative power over a thing as the owner[2].

The focus of this article centres on the examination of the implications concerning the assessment of the permissibility of property acquisition by acquisitive prescription by the State Treasury or a local government unit, as derived from Article 7 of the Constitution of the Republic of Poland[3]. Notably

[2] Co do aktualnego stanu nauki prawa por.: G. Matusik, *Zasiedzenie nieruchomości przez Skarb Państwa*, Warszawa 2021, *passim*, a z orzecznictwa znane uchwały SN z 18 listopada 1992 r., III CZP 133/92, OSP 1993, nr 7, poz. 153; siedmiu sędziów SN z 21 września 1993 r., III CZP 72/93, OSNCP 1994, nr 3, poz. 49 oraz uchwałę pełnego składu Izby Cywilnej z 26 października 2007 r., III CZP 30/07, OSNC 2008, nr 5, poz. 43.

[3] Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. z 1997 r. Nr 78, poz. 483, ze zm.).

– as will be elucidated subsequently – a discernible contradiction exists between this principle and the fundamental nature of property acquisition by acquisitive prescription. Next, this article will interpret both Article 172 of the Civil Code (pertaining to the acquisition of ownership of immovable property by acquisitive prescription) and Article 174 of the Civil Code (pertaining to the acquisition of ownership of movable property by acquisitive prescription) in a manner that resolves the aforementioned contradiction.

In previous discussions regarding the State Treasury's potential acquisition of property, the link between such acquisition through the State Treasury's unlawful action (specifically, possessing a thing without legal title) and the principle of legality, as outlined in Article 7 of the Constitution, has not been analysed[4]. Therefore, this research is not a challenge to prevailing opinions but aims to highlight that the rationale thus far, especially as articulated in the resolution of the full panel of the Civil Chamber of the Supreme Court dated 26 October 2007, has been insufficiently comprehensive. The assumption of this thesis is that the State Treasury may exercise authority over the thing as owner and that such administrative power has the character of possession (thus, in accordance with the theses of the Supreme Court resolution dated 26 October 2007, and contrary to the earlier Supreme Court resolutions dated 18 November 1992 and 21 September 1993) and – consequently – that the State Treasury's administrative power over the thing as owner falls (at least seemingly) within the hypotheses of the standards arising from Articles 172 and 174 of the Civil Code. The focal point is to determine if such an interpretation aligns with the constitutional principle of legality.

This study employs a dogmatic research method, deriving legal standards from individual provisions not only by means of various methods of interpretation, but also in such a way that they are in accordance with the hierarchical system of sources of law, and thus that the interpretation of lower-order (statutory) provisions does not conflict with higher-order (constitutional) standards.

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[4] Por. cytowane uchwały SN: III CZP 133/92, III CZP 73/93 czy III CZP 30/07 oraz postanowienia SN z 13 stycznia 2004 r., V CK 131/04, Legalis i 13 października 2005 r., I CK 162/05, OSP 2006, nr 9, poz. 107 oraz G. Matusik, *Zasiedzenie…*, *passim* i M.A. Zachariasiewicz, *Rozwój nauki o zasiedzeniu czy ślepy zaułek? Koncepcja wyłączającego zasiedzenie „imperialnego" władztwa Skarbu Państwa*, „Rejent" 2005, nr 9, *passim*. Na to, że zasiedzenie nieruchomości przez Skarb Państwa może stanowić legalizację bezprawnego działania państwa zwrócił ostatnio uwagę K. Zawada, *Kwalifikacja władania nieruchomością bezprawnie przejętą przez państwo w okresie Polski Ludowej jako posiadania w kontekście stwierdzenia zasiedzenia,* [w:] red. J. Haberko, J. Grykiel, K. Mularski, *Ius civile vigilantibus scriptum est. Księga jubileuszowa Profesora Adama Olejniczaka*, Warszawa 2022, s. 820.

2. Principle of legality

The principle of legality stands as one of the key principles of the rule of law. Its doctrinal articulation is found in Article 7 of the Constitution, according to which public authorities act in accordance with and within the limits of the law. This dictates that any action taken by a public authority must have a definitive normative basis[5]. Such statutory authorisation should underpin the public authority's engagement with a particular issue, ensuring that actions are taken in a fitting manner and decisions are issued in the correct legal form[6]. A public authority cannot act without a legal basis and therefore without having the competence to do so[7], and that it is obliged to comply with the applicable law[8].

This brings us to a pivotal query pertinent to our topic of interest: Does the principle of legality, as outlined in Article 7 of the Constitution, apply to all forms of state (and local government) actions? Or is its applicability limited solely to administrative powers, specifically within the ambit of the so-called 'sphere of *imperium*'? The use of the term 'public authority' by the legislature lends weight to the latter interpretation, implying an exercise of power.

A plain reading of the provision supports this viewpoint. It is suggested that the term 'public authority' encompasses 'organs of the state, as well as other public authorities executing administrative powers'[9]. Notably, the Constitutional Tribunal, in one of its judgments, tangentially acknowledged that Article 7 of the Constitution pertains to the act of 'exercising administrative powers' [10].

However, it should also be noted another prevailing perspective within legal academia suggests that the reach of the principle of legality, as derived from Article 7 of the Constitution, should not be narrowly confined to the administrative power of state authorities and local government units. This stance posits that the said provision encompasses 'all actions, irrespective of their legal characterisation, encompassing not only powers of an

[5] M. Krawczyk, *Podstawy władztwa administracyjnego*, Warszawa 2016, s. 36-41.

[6] P. Przybysz, *Instytucje prawa administracyjnego*, Warszawa 2020, s. 63.

[7] T. Długosz, *Kompetencja w publicznym prawie gospodarczym*, Warszawa 2021, s. 171-172 i nast.

[8] P. Tuleja, [w:] M. Safjan, L. Bosek (red.), *Konstytucja RP. Tom I. Komentarz do art. 1-86*), Warszawa 2016, s. 303-304.

[9] *Ibidem*, s. 304.

[10] Postanowienie TK z 11 kwietnia 2007 r., K 2/07, OTK ZU nr 4/A/2007, poz. 43.

administrative nature, but also actions undertaken via private law mechanisms'[11].

Neither of the aforementioned positions was substantiated with profound reasoning. Those advocating for a narrow interpretation of Article 7 of the Constitution largely hinge their arguments on the usage of the term 'public authority'. Conversely, those favouring a broader application merely underscore the absence of any explicit constraint limiting the provision exclusively to administrative powers. A potential resolution could be gleaned from an analysis of the concept of *stationes fisci*.

3. The concept of *stationes fisci* in the context of Article 7 of the Constitution

To address the aforementioned quandary, one must ascertain whether the legislator's use of 'public authority' implies that Article 7 of the Constitution is limited solely to the administrative powers of public authority. In other words, the crux of the matter is whether a 'public authority' can function outside the sphere of *imperium*. Delving into whether a public authority can operate within the realm of civil law – and thus within the *dominium* – without forsaking its stature as a public entity necessitates an examination of the term *statio fisci*.

It is a recognised stance in civil law doctrine that the State Treasury lacks distinct organs; rather, in civil law dealings, it operates via its structured *stationes fisci*[12]. Notably, *stationes fisci* are not exclusively established to function in the civil law domain. Instead, 'they perform dual duties: they serve as state organs executing administrative powers, and simultaneously as facets of a legal person, akin to the State Treasury'[13]. Being integral components of the state apparatus, *stationes fisci* undertake both civil law obligations and administrative powers[14]. Indeed, it is challenging to distinguish the state when engaged in civil law interactions (i.e., the State Treasury) from the state (and more broadly: public authority) when it exercises its public law powers.

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[11] M. Bitner, M. Kulesza, *Zasada legalizmu a zdolność kontraktowa jednostek samorządu terytorialnego*, „Samorząd Terytorialny" 2009, nr 6, s. 5. Do poglądu tego przychylił się J. Parchomiuk, *Wolność wyboru i nadużycie formy realizacji zadań publicznych*, [w:] red. B. Dolnicki, *Sposoby realizacji zadań publicznych*, Warszawa 2017, s. 543.

[12] R. Strugała, [w:] E. Gniewek, P. Machnikowski (red.), *Kodeks cywilny. Komentarz*, Warszawa 2021, s. 82.

[13] M. Pazdan, [w:] K. Pietrzykowski (red.), *Kodeks cywilny. Komentarz*, t.1. Warszawa 2021, s. 177. Podobnie: J. Frąckowiak, [w:] Z. Radwański (red.), *System prawa prywatnego*, t. 1: M. Safjan (red.), *Prawo cywilne – część ogólna*, Warszawa 2012, s. 1173.

[14] Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warszawa 2021, s. 201-202.

One must appreciate that the State Treasury is not merely a conceptual construct but, in essence, represents the State functioning within the private law domain[15]. This denotes that the representative of the State Treasury in civil law interactions is inherently a public authority. It is imperative to remember that the property of the state (or more broadly, of the public) should primarily facilitate the state's objectives and functions in terms of its public law operations. As has been rightly articulated, 'the legal identity of the State Treasury and the property rights that are consequentially bestowed upon it are primarily tools to facilitate the state's public responsibilities'[16]. The management of State Treasury property, in alignment with Article 5(1) of the Act on the Principles of Management of State Treasury Property[17], falls under the jurisdiction of public authorities and heads of local government units.

It is hence inferable that Article 7 of the Constitution encompasses not just the state's administrative powers but also the sphere of *dominium*. Since Article 7 of the Constitution refers to 'public authorities', while the legal construction of *stationes fisci* and Article 5(1) of the Act on the Principles of Management of State Treasury Property use similar concepts: 'state authority', 'public authority', that is to say, in Article 7 of the Constitution, the term 'public authority' is to be understood not so much as 'an authority when it exercises public authority' but as 'a public authority, regardless of whether it exercises public authority at the present time or whether it acts in the non-administrative (*dominium*) sphere'. Otherwise, there would be a paradox in which the same authorities would be the addressees of the aforementioned constitutional standard when they exercise public authority, whereas they would not be – if they were acting in the private law sphere. However, these spheres cannot be separated from each other. Apart from the shared identity of public authorities and *stationes fisci*, the dual function of the state becomes evident. Even when the state navigates the civil law domain, it does not deviate from its inherently public objectives. Consequently, it is clear that 'public authorities' also have a footprint in the private legal sphere (*dominium*).

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[15] Z. Radwański, A. Olejniczak, *Prawo*…, s. 201; R. Strugała, [w:] E. Gniewek, P. Machnikowski (red.), *Kodeks*…, s. 82. Por. też G. Bieniek, [w:] G. Bieniek, H. Pietrzkowski, *Reprezentacja Skarbu Państwa i jednostek samorządu terytorialnego*, Warszawa 2013, s. 18.

[16] W. Szydło, *Mienie publiczne w polskim prawie cywilnym i administracyjnym*, „Przegląd Prawa Publicznego" 2009, nr 3, s. 40. Podobnie U. Wiśniewska, [w:] red. F. Grzegorczyk, M. Wierzbowski, *Ustawa o zasadach zarządzania mieniem państwowym. Komentarz*, Warszawa 2020, s. 73.

[17] Ustawa z dnia 16 grudnia 2016 r. o zasadach zarządzania mieniem państwowym (Dz.U. z 2021 r. poz. 1933).

Thus, this concept – as used in Article 7 of the Constitution – does not imply limiting the scope of application of the principle of legality exclusively to the sphere of the *imperium*. In the absence of further arguments supporting such a limitation, it is imperative to recognise, in accordance with *lege non distinguente*, that the principle of legality encompasses all facets of state operations, be they vested with administrative powers or grounded in private law.

4. The essence of acquisitive prescription in the context of the operations of the State Treasury

Acquisitive prescription belongs to a more extensive category of legal institutions collectively referred to as historicity. These mechanisms fundamentally relate legal consequences to the elapse of time. The special feature of acquisitive prescription is that it leads to the reconciliation of a factual state that is not in conformity with the legal state with a legal state that is not in conformity with the factual state, by bringing the legal state into line with the factual state and – consequently – to legal certainty[18]. Acquisitive prescription, like other institutions of historicity, therefore serves to 'discipline the right holder'[19], as it constitutes a 'sanction' for the right holder's passivity and failure to exercise their subjective rights[20].

The construction of the acquisitive prescription is therefore based on granting an advantage to an unlawful state characterised, however, by permanence. A possessor who is not the rightful owner but behaves as such can eventually claim the right through acquisitive prescription. In contrast, the right to possess property to the exclusion of others belongs to the essence of the right of ownership. In other words, a person *in statu usucapiendi* always infringes another's property right, regardless of whether they act in good or bad faith. The statement that a certain behaviour constitutes an infringement of another's subjective right means at the same time that it constitutes an infringement of the substantive right[21], as the substantive right derives from

[18] J. Gordley, *Foundations of Private Law. Property, Tort, Contract, Unjust Enrichment*, Oxford 2007, s. 141-145.

[19] A. Brzozowski, [w:] K Pietrzykowski (red.), *Kodeks*…, t. 1, s. 502.

[20] P. Sobolewski, [w:] red. K. Osajda, *Komentarze prawa prywatnego*, t. 1, *Kodeks cywilny, Komentarz* , t. 1, Warszawa 2017, s. 822.

[21] M. Sośniak, *Bezprawność zachowania jako przesłanka odpowiedzialności cywilnej za czyny niedozwolone*, Kraków 1959, s. 128.

the subjective right[22] and – in essence – the subjective right is a statement about the substantive right, serving to describe the legal situation of a particular person[23].

This understanding leads to a pivotal deduction: acquisitive prescription inherently legitimises a situation that opposes the legal order. This will be particularly blatant in the situation of bad faith acquisitive prescription of immovable property, the essence of which is that the possessor knows or could easily have known that they are not the owner. This means that not only does the possessor infringe another's property right, but also that their behaviour (act or omission) is culpable.

The above considerations must be applied to the specific legal context in which the State Treasury operates.

Legal doctrine accepts that the State Treasury may possess autonomously a thing (in practice, this will refer to immovable property) to the possession of which the State Treasury has no legal title and, as a result, obtain ownership of it on this basis. At most, what is considered *in concreto* is the 'taking of the property into unlawful autonomous possession' by the State Treasury[24].

Possession is a factual state. Autonomous possession, which is a prerequisite for the acquisition of ownership of a thing by acquisitive prescription, means the possession of the thing as owner[25]. Undoubtedly, the State Treasury, as a legal person, can dispose of a thing as owner, whether or not it has legal title to do so. From our point of view, the relevant cases are those in which the State Treasury's power over the thing has the character of autonomous possession within the meaning of Article 336 of the Civil Code, while at the same time in which the State Treasury is not the owner of the thing. In other words, it concerns those situations in which the autonomous possessor of the thing (at least other than the State Treasury or a local government unit) would be *in statu usucapiendi*.

From the point of view of our further considerations, it is important to realise that the situation of the possessor during the duration of the period of the acquisitive prescription contains an unseen internal contradiction. Indeed, if autonomous possession were lawful, it would be based on the right of

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[22] R. Kasprzyk, *Formalny charakter bezprawności w prawie cywilnym*, „Studia Prawno-Ekonomiczne" 1989, t. XLIII, s. 76-77.

[23] Z. Radwański, A. Olejniczak, *Prawo*…, s. 89.

[24] Por. G. Matusik, *Zasiedzenie*…, s. 263 i nast.

[25] Por. J. Gołaczyński, [w:] *System prawa prywatnego*, pod. red. Z. Radwańskiego, t. 4, *Prawo rzeczowe*, pod red. E. Gniewka, Warszawa 2021, s. 620.

ownership. Thus, it could not lead to the possessor acquiring the right of ownership, as the autonomous possessor is already the owner of the thing according to the law. In fact, to the very essence of the acquisitive prescription, as an institution that brings order to the discrepancy between the factual state and the legal state, is that the factual state (i.e. possession) is contrary to the legal state (ownership). This means that any possession leading to acquisitive prescription constitutes an infringement of another's subjective right to ownership and therefore, as we explained above, constitutes unlawful behaviour[26]. This leads to the conclusion that any autonomous possession leading to acquisitive prescription is based on the unlawful behaviour of the possessor. In this, the tension between the fact that the State Treasury possesses things without legal title and the principle of legality established in Article 7 of the Constitution is shown.

This tension was brought to light by the position of the Supreme Court, expressed in the quoted resolution of 18 November 1992 (III CZP 133/92), that 'The assertion [...] of the acquisition of immovable property by acquisitive prescription by a party who acquired the immovable property unlawfully, as established by a valid decision, would constitute an abuse of the right and such a party cannot enjoy protection'. However, this view does not resolve the dispute. Firstly, it ignores the fact that any possession that is not based on a legal title is unlawful, and furthermore that, in general, such a situation has been accepted by the legislator. Indeed, as mentioned, acquisitive prescription is the legalisation of a factual state that is unlawful[27]. On the other hand, assuming that any acquisitive prescription (and thus an institution *expressis verbis* established by the legislator) is at the same time an abuse of a subjective right would amount to irrationality on the part of the legislator, who would create a method of acquiring ownership of immovable property contrary to another standard established by the legislator. This view has, moreover, been rejected in more recent case-law[28].

In fact, the problem appears to be different. The question is not whether unlawful possession of a thing can generally lead to acquisitive prescription. The issue is whether the State Treasury or a local government unit can claim the beneficial effects of unlawfully possessing a thing as owner, by acquiring ownership of the thing.

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[26] Por. też szerzej: J.M. Kondek, *Bezprawność jako przesłanka odpowiedzialności odszkodowawczej*, Warszawa 2013, s. 79-96.

[27] Por. G. Matusik, *Zasiedzenie*…, rozdz. I, § 6, Legalis.

[28] Por. cyt. uchwałę III CZP 30/07; postanowienie SN z 28 listopada 2014 r., I CSK 658/13, LEX nr 1621304; z 12 maja 2017 r., III CSK 60/17, LEX nr 2312466.

5. Conflict resolution method

It follows from the essence of acquisitive prescription that the legal system tolerates autonomous possession that is unlawful if such possession is not counteracted by the possessor and even – after the lapse of time – the legal system legitimises it by granting ownership to the possessor against the owner. Within the construct of acquisitive prescription, the conflict between the acceptance of acting without a legal basis and the idea of protecting subjective rights is clearly resolved in favour of the former. Does this mean that the tension described above between the State Treasury's ability to acquire acquisitive prescription and the principle of legality is illusory? If the principle dictates that an unlawful act by a civil law subject results in acquisitive prescription, why should not this apply to the State Treasury, given that it is also a civil law entity?

This perspective, which is also prevalent in legal studies, suggests that if the State Treasury's acquisition of the acquisitive prescription is not prohibited, then it should be deemed permissible[29]. However, it results in the essence of the problem at hand being overlooked. Indeed, the State Treasury is not a civil law subject like any other. This difference can be seen precisely in the wording of Article 7 of the Constitution. The legislator has charged only public authorities with the duty to operate on the basis of the law. As noted in legal doctrine and case law, the essence of the standard deriving from Article 7 of the Constitution is that 'In contrast to individuals (citizens) and their associations, the principle that everything that is not prohibited is permitted does not apply, but requires that the basis for action within the meaning of Article 7 of the Constitution be found in the rules of competence and that these rules be interpreted strictly'[30]. On the contrary, public authorities are obliged to act in accordance with and within the limits of the law[31].

The above means that the State, and therefore also the State Treasury, unlike other legal entities, can only operate within the limits of the competences granted to it by statutory law. Whereas being in possession of a thing without a legal basis, i.e. being *in statu usucapiendi*, means, as we said above, acting without a legal basis (since having a legal basis would mean either that the possessor is the owner or that the possessor is not an

[29] G. Matusik, *Zasiedzenie*…, s. 43-44.

[30] T. Długosz, *Kompetencja*…, s. 172. Por. też wyrok TK z 27 maja 2002 r., K 20/01, OTK ZU nr 3/A/2002, poz. 34.

[31] P. Przybysz, *Instytucje*…, s. 63.

autonomous possessor but a dependent possessor) and such an action violates another's subjective right, i.e. the right of ownership. The solution to this conflict must be to give priority to the constitutional standard: The State Treasury should not be in possession of a thing without a legal basis and cannot benefit from this in the form of acquisitive prescription. Adopting an opposing stance would imply an act devoid of a legal basis, thereby infringing the tenet enshrined in Article 7 of the Constitution. Obviously, such a sentence belongs to statements about the sphere of duty and not the sphere of being, and it cannot be ruled out that in practice the State Treasury often disposes of another person's thing as an owner. However, the stipulation in Article 7 of the Constitution necessitates either a refusal to acknowledge such administrative power as possession or an acceptance that the State Treasury's autonomous possession of a thing cannot culminate in an acquisitive prescription. This is because the latter would be tantamount to endorsing conduct in contravention of constitutional standards. Given that the former proposal contravenes the perception of possession as a mere factual state[32], the latter proposition emerges as the correct interpretation. Articles 172 and 174 of the Civil Code must therefore be interpreted in accordance with Article 7 of the Constitution, and thus that the State Treasury may not be the entity exercising the acquisitive prescription.

It could be argued against such a view that it goes against the essence of acquisitive prescription, namely precisely the legitimisation of a factual state that is unlawful. However, it should be noted that the view presented in this article does not prevent the acquisition of property by acquisitive prescription in general, but only limits it to persons other than the State Treasury. The point is that persons who are not the addressees of the standard contained in Article 7 of the Constitution cannot be required to act solely within the limits of the competences conferred on them by statutory law. This means that acting without a legal basis, or even infringing another's subjective right, can lead to a legal effect that is favourable to that entity. However, in the case of the State Treasury, allowing such a result would amount to a kind of ‘reward’ of that person for an act to which they were not entitled. Therefore, a distinction must

[32] Taki pogląd zbliżałby się do zapatrywania wyrażonego przez Sąd Najwyższy w przywoływanych wyżej uchwałach z 18.11.1992 r. i z 21.09.1993 r., które jednak dotyczyły tylko uznania za niebędące posiadaniem określonych sytuacji władztwa Skarbu Państwa nad nieruchomością, nie zaś ogólne wykluczenie takiej kwalifikacji faktycznego władztwa sprawowanego przez Skarb Państwa. Od poglądów wyrażonych w tych uchwałach Sąd Najwyższy odszedł w również przywoływanej już wyżej uchwale Pełnej Izby Cywilnej z 26.10.2007 r.

be made – in the context of acquisitive prescription – between the legal situation of the State Treasury and the legal situation of other persons.

It should be discussed whether the differential treatment of the State Treasury or local government units would not contradict the principle laid down in Article 32 of the Constitution, according to which all persons shall be equal before the law, all persons shall have the right to equal treatment by public authorities, and no one shall be discriminated against in political, social or economic life for any reason whatsoever. Undoubtedly, the statement that these entities cannot acquire acquisitive prescription implies a differential treatment between them. However, it should be noted that the basis for this differential treatment is a standard of the same rank as the principles of equality, namely the principle of legality. A derogation from the principle of equality is permissible as long as it has adequate constitutional justification[33]. As described above, the principle of legality, establishes such an exception as it only applies to public authorities. Only these authorities can act only in accordance with and within the limits of the law. Thus, the resulting differentiation of their legal situation, e.g. consisting in their inability to obtain an advantage as a result of unlawful behaviour, must be considered acceptable in the light of the principle of equality.

Similarly, the view presented does not conflict with the principle of equality of civil law subjects. Indeed, it consists in the fact that neither party to a civil law relationship has a dominant position vis-à-vis the other[34]. This does not exclude differentiation of the legal situation of certain civil law subjects, e.g. by limiting the possibility for certain contracts to be concluded only by certain subjects (e.g. Article 805 of the Civil Code). Furthermore, constitutional principles (and therefore the principle of legality) take precedence over systemic principles and cannot be infringed or restricted by the latter[35].

6. Conclusions

It has been explained above that the view that the State Treasury or local government units can acquire a thing by acquisitive prescription contradicts the principle of legality expressed in Article 7 of the Constitution. As a result,

[33] W. Borysiak, L. Bosek, [w:] red. M. Safjan, L. Bosek,*Konstytucja RP*, t. 1, *Komentarz do art. 1-86*, Warszawa 2016, art. 32, nb. 120.

[34] Por. A. Brzozowski, W. Kocot, E. Skowrońska-Bocian, *Prawo cywilne. Część ogólna*, Warszawa 2010, s. 18; Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warszawa 2021, s. 3.

[35] M. Safjan, [w:] *System prawa prywatnego*, red. Z. Radwański, t. 1, *Prawo cywilne – Część ogólna,* red. M. Safjan, Warszawa 2012, s. 325-326.

it should be considered that only legal persons other than the State Treasury or local government units may acquire ownership by acquisitive prescription.

Accepting the above view has important practical implications. The ability to cite acquisitive prescription can aid the State Treasury in both defending against claims from other parties and in regularising the legal status of the thing, especially when expenditures are required for it[36]. Denying the State Treasury the ability to obtain ownership by acquisitive prescription will undoubtedly make its legal position more complex in such scenarios. However, it seems difficult to justify on pragmatic grounds the rejection of one of the fundamental constitutional principles of the Republic of Poland, namely the principle of legality. The way to resolve this conflict should be the development of legal institutions to protect the interest of the State Treasury (and, more broadly, the public interest), which, however, would not mean the State Treasury benefiting from its own unlawful action and thus would not be contrary to Article 7 of the Constitution[37].

In conclusion, all the statements in this article concerning the legal situation of the State Treasury should also be applied to local government units. Solely for the sake of clarity of argument, these are essentially limited to the legal situation of the State Treasury only. Article 7 of the Constitution does not refer exclusively to state authorities, but to public authorities. Whereas the local government also exercises this power (Article 16(2) of the Constitution). Thus, local and regional government units are bound by the principle of legality in the same way as the State Treasury and – consequently – cannot benefit from their unlawful actions or actions without a legal basis. As a result, it must be assumed that also local government units, and not only the State Treasury, cannot acquire ownership by acquisitive prescription.

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[36] Por. G. Matusik, *Zasiedzenie*…, rozdz. I, pkt 7.

[37] Przykładem instytucji, która mogłaby znaleźć zastosowanie zamiast instytucji zasiedzenia, jest wywłaszczenie nieruchomości o nieuregulowanym stanie prawnym, o której mowa w art. 118a ustawy z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami (Dz.U. z 2021 r. poz. 1899, ze zm.).

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Akty normatywne:

1. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. z 1997 r. Nr 78, poz. 483, ze zm.).
2. Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny (Dz.U. z 2022 r. poz. 1360, ze zm.).
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4. Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami (Dz.U. z 2021 r. poz. 1899, ze zm.).

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2. Uchwała Pełnego Składu Izby Cywilnej z 26 października 2007 r., III CZP 30/07, OSNC 2008, nr 5, poz. 43.
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6. Postanowienie TK z 11 kwietnia 2007 r., K 2/07, OTK ZU nr 4/A/2007, poz. 43.
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10. Postanowienie SN z 28 listopada 2014 r., I CSK 658/13, LEX nr 1621304.

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