

# OWNER'S SHARES

Grădinaru Nicolae<sup>1</sup>

## Abstract

*Possession action is that action by which the person who has owned a property for at least one year can request the court to prevent or remove any disturbance of his possession or, as the case may be, to return the property. The holder is also entitled to claim compensation for the damage caused.*

**Keywords:** *possessory action, grievance, reintegration, violence.*

**JEL Classification:** K0 K1

According to art.1003 of the Code of Civil Procedure, the possessor's requests are admissible only in the cases and conditions provided by the Civil Code. Possession action is that action by which the person who has owned a property for at least one year can request the court to prevent or remove any disturbance of his possession or, as the case may be, to return the property. The holder is also entitled to claim compensation for the damage caused. Conditions for exercising the possessory action In order to be able to exercise the possessory action, the following conditions must be cumulatively met: - the person has owned the property; - a possession disorder must have occurred; - possession of the good has been exercised for at least 1 year. The possessor is considered the one who owns the good, in fact exercises the prerogatives of the property right over a good, thus behaving like an owner. Persons against whom the actions of the possessor may be brought

The owner's actions can also be brought against the owner.

However, the possessory action cannot be brought against the person against whom there is an obligation to return the property.

The term for exercising the possessory action

In case of disturbance or dispossession, peaceful or violent, the action is introduced within the limitation period of one year from the date of the disturbance or dispossession. Therefore, only within the term of 1 year from the date of the peaceful or violent disturbance or dispossession, the possessory action can be introduced. The introduction of the possessory action after the expiration of the term of 1 year, will lead to its rejection as being prescribed.

If the disturbance or dispossession is violent, the action may be brought by the person exercising a vitiated possession, regardless of the duration of his possession. The vices of possession are: discontinuity, violence and secrecy. Possession is discontinuous as long as the possessor exercises it with abnormal intermittencies in relation to the nature of the good. The discontinuity can be opposed to the possessor by any interested person. Possession is disturbed as long as it is acquired or preserved through acts of violence, physical or moral, that have not been provoked by another person. Possession is clandestine if it is exercised in such a way that it cannot be known. Only the person to whom the possession is disturbed or clandestine can invoke these vices. Defective possession becomes useful as soon as the vice ceases.

Taking measures for the preservation of the owned property

If there are reasonable grounds to believe that the property owned may be destroyed or damaged by something in the possession of another person or as a result of work, such as erecting a building, cutting down trees or digging on adjacent land, the owner may call for the necessary measures to be taken to avoid danger or, if necessary, for the cessation of work. These measures are necessary for the preservation of the substance of the property in his possession.

---

<sup>1</sup> PhD, Associate Professor, Universitatea "Constantin Brâncoveanu" Pitești

Until the application is settled, the holder or, as the case may be, the other person may be obliged to pay a security<sup>1</sup>, left to the discretion of the court, only in the following situations: a) if the court orders, provisionally, the movement of the work or the cessation of the works, the bail is established in the charge of the possessor, so that the damage that would be caused to the defendant by this measure can be repaired; b) if the court approves the maintenance of the work in its current state or the continuation of the works, the bail is established in the charge of the defendant so as to ensure to the possessor the amounts necessary for the restoration of the previous situation. It follows from the provisions set out above that the holder may request only through the court that the necessary measures be taken to avoid the destruction or damage to the property which he possesses. The measures for the preservation of the good are temporary, more precisely until the state of danger on it disappears. According to art.1004 of the Code of Civil Procedure, the possessor's requests are judged urgently and especially. The counterclaim and any other claim for the protection of a right in relation to the property in dispute are inadmissible. The decision given on the request of the possessor is subject only to appeal. The Civil Code establishes two possessory actions: the general possession action also called the complaining action and the special possession action or the reintegration action. Complaint action By the action in complaint, the possessor requests the cessation of any act of disturbance of possession or regaining possession, unless the dispossession was done by violence. Possession disturbances can be, in fact, what consists in committing any material act by which the possession is violated (eg passing on someone else's land without the owner's approval) or law, which consists in any judicial or extrajudicial act by which a person has claims against to the landlord (eg the summons sent to a tenant by a third party requesting that the rent be paid to him and not to the landlord). In order to be able to exercise the general possession action (action in complaint) the following conditions must be fulfilled cumulatively:

- the possession must have lasted at least one year, ie the holder claimed to prove that before the disturbance or dispossession he owned the property for at least one year;
- not more than one year has passed since the disturbance or dispossession;
- the plaintiff's possession to be useful, ie to meet the conditions provided by art. 922 para. 1 Civil Code. Regarding the proof of possession, the rules inscribed in art. 919 para. 1 Civil Code, ie, until proven otherwise, the one who owns the property is presumed possessor.

Reintegration action The reintegration action is used by the possessor when the disturbance or dispossession took place through violence. Violence means any act contrary to order and good relations in society. In the doctrine, the acts of violence that justify this action in reintegration are considered: - the acts of occupying a building without the permission of the owner; - acts of obstruction by which a person prevents the owner from owning the building (eg erecting a wall in the way of the owner); - acts of destruction (eg demolition of a wall, destruction of the crop). For the exercise of this action, only one condition is required, namely not to have passed one year from the disturbance or dispossession. Therefore, only within 1 year from the date of peaceful or violent disturbance or dispossession, the possessory action can be exercised. If the disturbance or dispossession is violent, the action can be introduced by the one who exercises

---

<sup>1</sup> art.1057 of the Code of Civil Procedure

When the law provides for the provision of a deposit, the amount owed by the party with this title is established by the court in accordance with the law and is deposited with the State Treasury, CEC Bank - S.A. or to any other credit institution which carries out such operations, on behalf of that party, at the disposal of the court or, as the case may be, of the bailiff.

Unless otherwise provided by law, the security shall not represent more than 20% of the value of the object of the application, and in the case of applications whose object is not assessable in money, it may not exceed the amount of 10,000 lei.

The deposit is usually deposited in cash.

a vitiated possession, regardless of the duration of his possession (art. 951 paragraph 2 of the Civil Code)<sup>1</sup>.

The actions of the possessor are used when a disturbance or dispossession has occurred, and the victim seeks to obtain the cessation of the disturbance or the return of the property. In accordance with the provisions of the Civil Code, the possessor is entitled to claim compensation for the damages caused. Usually the actions of the owner are exercised by the owner of a real estate, but art. 949 paragraph 2 of the Civil Code also regulates the possibility of the precarious holder to file this action. A precarious holder may invoke the effects recognized in possession only in the cases and limits provided by law. At the same time, the legislator regulated the fact that the possessory action cannot be brought against the person against whom there is the obligation to return the good (art. 950 Civil Code). Also, a special legal protection of possession was established according to art. 952 Civil Code, which consists in taking measures for preservation of the owned property. These measures are intended to prevent the occurrence of the disorder<sup>2</sup>.

In order to be able to be promoted and admitted a request based in law on the provisions of art. 952 of the Civil Code, two conditions must be met cumulatively: - there are reasonable grounds for proving the imminent danger of destruction or damage to the property in possession, and - the danger to be generated by the action of a thing in the possession of another person or as a result of some works, such as the erection of a construction, the cutting of some trees or the carrying out of some excavations on the neighboring background. The owner, or as the case may be, the other person may be obliged to pay a bail until the settlement of the request, the bail being at the discretion of the court only in the following situations: - if the court provisionally orders the removal of the work or the cessation of the works, the bail is established in the charge of the possessor, so that the damage that would be caused to the defendant by this measure can be repaired; - if the court approves the maintenance of the work in its current state or the continuation of the works, the bail is established in the charge of the defendant, so as to ensure to the possessor the necessary amounts for restoring the previous situation. The person requesting the taking of such measures will have to prove the possession, without the need to prove a main real right over the endangered property, these measures being made available to the possessor.

### **Bibliography:**

Bonciu Ghe. Grădinaru N. - Civil law. Main real rights. Ed. Economic Independence. 2018.

---

<sup>1</sup> The owner's actions can also be brought against the owner.

However, the possessory action cannot be brought against the person against whom there is an obligation to return the property.

<sup>2</sup> If there are reasonable grounds to believe that the property owned may be destroyed or damaged by something in the possession of another person or as a result of work, such as erecting a building, cutting down trees or digging on adjacent land, the owner may call for the necessary measures to be taken to avoid danger or, if necessary, for the cessation of work.