

Neighbour's rights and their protection in the theory and practice in context with the selected European legislation

Abstract

The main goal of this thesis is the complex description of the neighbour's rights and their protection in the effective Czech civil code, which is then compared with the selected foreign legislation. The wide variety of rules and regulations, which historically serve as specific limitations of proprietor's rights between persons who can be called neighbours, is comprehensively described in the five chapters of this work. The thesis emphasizes the historical elements of the topics, as well as current effective laws and regulations, which are nowadays based mainly upon historical traditions of Roman law, which was the main inspirational source for the ABGB, the last similar civil code effective in the time of The First Czechoslovak republic. The effective civil code significantly changed the system and depiction of the neighbour's rights and to a great extent surpasses previous conception of the civil codes effective from 1. 1. 1950 to 31. 12. 2013. The most important changes are bound with the broad extension of the protection of the neighbour's rights and significant clarification of its system in the current effective civil code. Furthermore, many institutes of the protection of the neighbour's rights have returned into the Czech civil code (i. e. necessary passage) and there are provisions of law which are even completely new (i. e. § 1020 of the effective civil code). The thesis also emphasizes procedural aspects of the application of the protection of the neighbour's rights and considers practical aspects of its effectiveness in the legal relations among neighbours and the related proceedings. The research of this thesis is then concentrated on the analysis and the subsequent comparison of the selected European law systems with the abovementioned Czech laws and regulations regarding the protection of the neighbour's rights, especially about to similarities, differences and *de lege ferenda* considerations.

The first chapter of the thesis is dedicated to the protection of the neighbour's rights in the historical periods of ancient Roman law and its successive development in the area of the Czech historical lands during medieval ages. It includes analysis of the corresponding institutes of the neighbour's rights with the detailed depiction of its development from the relative perfection of the Roman law to the genesis of this area of law in the Czech historical lands. The chapter ends with the emergence of the large European codifications toward the end of 18th and beginning of the 19th century.

The second chapter describes history and evolution of the protection of the neighbour's rights since the coming of Austro–Hungarian codification ABGB, which was the effective law in the Czech lands for almost 150 years. Furthermore, it depicts divergence from the ABGB and wholesale vulgarization of this branch of law during the times of unfreedom. Chapter also includes analysis of the efforts towards modernization of the protection of the neighbour's rights in civil code 1964 in the times of unfreedom and during novelizations after the year 1989.

The third chapter is about present legal regulation of protection of the neighbour's rights in the effective civil code. It depicts current state of this area of law, theoretical basis of the protection of the neighbour's rights and also the basic premises of the limitation of the proprietor's rights in the civil code.

The main part of this thesis lies in the fourth and fifth chapters. The fourth chapter presents in particular current status of the legal regulation of the protection of the neighbour's rights, as presented in § 1003–1036 of the civil code. It describes the individual provisions from this section of civil code, its historical connotations, and inspirational sources. It also contains general judiciary conclusions of The Supreme Court of the Czech Republic upon this topic, including those about possibilities of usage of the judgements regarding to the previous civil code 1964. This chapter also focuses on general usage of the provisions regarding the protection of the neighbour's rights and judiciary decisions about the current effective provisions of law. It also contains selected cases that are strongly connected to problems of this area of law, which are deeply analysed. The chapter also summarizes pros and cons of the Czech protection of the neighbour's rights and provides individual suggestions *de lege ferenda*.

The last chapter analyses the protection of the neighbour's rights in the selected foreign European legislation. The selected European legislation is individually and generally compared to the Czech protection of the neighbour's rights listed in the chapter four. In the very end of this thesis, I comprehensively evaluate the conclusions researched in this thesis and critically express my opinion about the conclusions about regulation regarding the protection of the neighbour's rights. Finally, it is here where I conclude fulfilment of the goals of this thesis, summarize the proposed solutions *de lege ferenda*

and describe my thoughts about the future possibilities of the extension of abovementioned research.