

Possession as a legal situation (material perspective)

The aim of my thesis is to analyse one of the oldest and the most debatable legal institute of civile law. Possession has a very rich history and the jurisprudence devotes a constant attention to it. The reason for my research is to interpret the concept of tenure under the Czech law in force, to consider the positive qualities and the negations of the institute and to aim at prepared legal regulation of possession within the bounds of future Civil Code.

The thesis is composed of five chapters, each of them dealing with different aspects of tenure. Chapter One is introductory and is subdivided into three parts. Part One explains that the general institution of tenure does not exist and argues for the significance of tenure . Part Two documents the development of the enactment of tenure and tries to put near the controversies about its legal character. Part of the jurisprudence argues for a subjective right of tenure, while the other part seems it like a matter of fact only. Part Three describes the legal status of possession under the Czech law in force.

Chapter Two is concerned with the general questions of tenure. The chapter consists of four parts. Part One focuses on two basic factors of possession, *corpus possessionis* and *animus possidendi*. Part Two outlines how the person in possession can acquire or lose his tenure. Part Three characterises the objects of possession and analyzes which things and rights can be held by the possessor, while Part Four describes the person in possession.

The question about the types of tenure is the theme of Chapter Three. Part One focuses on the historical comparison, while the following parts deal with the czech law in force. Part Two highlights the terms “good faith” and “bad faith” and endeavours to show the differences between the lawful and the wrongful possession. The legal position of the lawful holder is presented in Part Three - this passage describes the rights and the duties of the holder in good faith and illustrates the settlement with the proprietor. Part Four compares the legal position of the illegal holder subsequently.

Chapter Four concentrates on the legal protection of tenure. The text explains that the wrongful possession is not a subjective right and argues for the interdictional protection which is considered as an institution of public law. The protection via an action at law has a private – law character and suits the lawful holder only.

Conclusions and evaluation about possession within the bounds of Civil Code in force are drawn in Chapter Five. Because a new codification of private law is prepared the thesis attempts to compare former and future legal regulation. The study suggests that actual enactment is suitable and need particular amendments only. To review the future regulation is the task for the law in practise.