

Abstract

This paper deals with questions of formation of apartments and non-residential areas in properties under the law No. 72/1994 Coll. This field infringes both private and public law norms. The aim of this paper is to make clear mutual relations of particular legal regulations more or less concerning such questions, to consider the solution of disputable cases in practice and to present several proposals for an amendment of existing legal regulation.

The introduction deals with the brief historical development of formation of apartment ownership under the law preceding above-mentioned law No. 72/1994 Coll. now in operation. The gist of this paper is the detailed analysis of particular ways of formation of apartments and non-residential areas (units) under present and effective legislation of Czech Republic, respectively upon unilateral action made by the original property holder or on the strength of contracts made between two different subjects, whose content is strict definition of property units. There are several sections dealing with questions of strict definitions of apartments and non-residential areas, each one of them contains detailed analysis of legal regulation of given solution both under the law No. 72/1994 Coll. and in relation to incidental legal provisions in the sphere of private and public law. The attention is paid to some inconveniences that might take place in practice when legal provisions are applied and hereinbefore questions are being consulted in relation to judicial decisions. Individual sections present specific solution suggestions of assorted situations and proposals for an amendment of existing legal regulation (legislation *de lege ferenda*).

The section, coming after sections dealing with ways of formation of apartments and non-residential areas, concerns rights and obligations arising from ownership, respectively both in general and in the concrete ownership of apartments and non-residential areas.

Following section deals with the very transfer of ownership of apartments and non-residential areas according to existing legislation. The attention is also paid to tax

aspects of units ownership transfer with concentration on situations when such proprietary operations are exempted from tax liability.

The existence of apartments or non-residential areas in the property may result from the formation of "association of units' owners" as a legal entity performing property management services and other tasks entrusted by law. In section No. 7 the author of the paper, in addition to description of formation of such association and its organs, considers the importance of such a legal entity. In this respect there are presented organs of this subject and thereafter the consequences of dissolution of apartments or non-residential areas in the property in relation to association of units' owners.

In conclusion the author of the paper makes a comparison of adjustments of housing problems with adjustments of Slovak Republic, where the stress is put on specifics as compared with Czech Republic, respectively under the local law No. 182/1993 Coll. Slovak Republic legislation is in many respects source of inspiration for Czech legal regulations.

The author's aim and immodest wish is to create practical manual to future definition of apartments and non-residential areas in properties including their subsequent transfers, respectively both for expert and general public. He would consider as a real success if this paper is thereafter used as a source of inspiration for persons participating in law-making process and with their contribution the legal rules would be amended, possibly applied, for the benefit of subject concerned.

Klíčová slova:

Byty a nebytové prostory / apartments and non-residential areas.