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Ownership of real estate in the Czech legal order

Abstract

The reasons, why I decided to choose as a topic of my dissertation, issues of ownership in the Czech legal code, it was just a few. In the first place, therefore, that the legal concept of property rights is seen in any democratic legislation, as the basic instrument governing private relations in society. And as such a fundamental tool must be properly treated in the legislative plane.

The concept of the ownership, may seem at first glance a very clear and smooth, but the opposite is true. Really fine and perfectly understand this concept and to understand its theoretical structure, is not simple at all. In particular, on the grounds that many legal theorists interpret the content of the concept of ownership a little differently, and there was no agreement on the definition of unique match and the determination of the theoretical sources of this concept. Of course, in the case of authoritarian or totalitarian regimes is the institutes of the ownership in national legal systems often formally retained, but its content and form are often significantly modified.

The aim of the thesis was also to focus on the issues of real estate. Real estate can be understood as a special group of things that have specific characteristics, are often higher values and have for the company and its operation of substantial influence. This is to be seen even on the grounds that between real estate include, inter alia, flats. Housing can be defined as one of the fundamental human needs, which enjoys special protection by the state. Also, the legislator establishes a specific legal regime for the management of real estate. His effort is undertaken to ensure greater legal certainty and transparency in the management and registration of real estate.

I tried to find and describe the bases and approaches to the institutes of ownership. To explain its current understanding in accordance with the valid legal regulations and capture its definition and presentation in the current standards. Of course I proceeded from the legal norms of the highest legal force, despite the adjustment in the Civil Code to standards, which are rather special modifications.

Also, I tried to look back in history, in short, and to recall the important milestones and historical background, from which today's concept and perception of ownership is based.

Since the basic constitutional principles, which have a major impact on the functioning of a democratic society, are recognized in the Charter of fundamental rights and freedoms, I also work in its constitutional sources of the Institute of ownership.

I further tried to dismantle a valid legislation, which regulates the ownership issues. The Civil Code, which defines all the important general concepts, which also operates the entire legal order. On this occasion, I tried to outline the various theoretical approaches to the understanding of the concept of ownership.

Later in my dissertation I have made my goal to dismantle the notion immovables in the legal sense. First I tried to even define the concept of the thing, which is not, despite his seeming simplicity is hard. Further to that I focused on a set of immovables.

If I was able to solve the theoretical problem, as the current law sees the concept of ownership, so in subsequent parts of my work I wanted to touch cases where there is a plurality of ownership. Therefore, I devoted part of my work, the institutes of the unit and the joint ownership of spouses.

I also deal with the legal instruments for the protection of ownership against his withdrawal, or illegal interference. This is very important, particularly from a practical point of view. In the interpretation of the modalities of the protection of ownership of the breakdown of the Civil Code. Therefore, firstly I was interested in the protection of ownership, more precisely - the last peaceful state, which is provided by public authorities. Secondly, I devoted a chapter in my dissertation on the issue of self-help, and in conclusion, I analyzed the possibilities of judicial protection in the form of actions. At this point I was trying to provide interpretation, not just in terms of substantive law, but also in terms of procedural law.

Also the issue of neighborly rights did not escape to my attention. In particular, on the grounds that this is a case of collision performance of property rights of two or more entities. In practice, violations of the rights of the common neighborhood. Although often disputes rather less seriousness, for their frequency is an important topic. That's why I even those restrictions of ownership.

I focused in a separate chapter on the legal principle of "Superficies non solo cedit", which is valid on the territory of the Czech Republic already sixty years. This principle is often discussed as of lately, mainly due to the proposed reflection on its abandonment in the proposed codificated Civil Code. I tried to describe the pros and cons of the two possible approaches, and not just in terms of purely theoretical, but also from the praxis.

Because not just apartments and houses can be seen as immovables, but also and especially to agricultural land and forest land, therefore more of my work I began as the land law, and legal relations in land. Once again I turned to the past, where I said, as the current legal relations to land shaped, in particular with regard to the restitution of land ownership in the first half of the 1990s.

If I'm talking about the ownership, one of the supporting themes of my work was also the issue of acquisition of ownership. I tried to describe the various ways in which you can acquire ownership of immovable property. This is a relatively wide range of options. Each of the modes of acquisition of ownership of the property and its peculiarities. I tried to describe the specifics of this, draw attention to the individual differences between the ways to acquire ownership of immovable property and, where appropriate, to enrich the individual examples of case-law of the courts of higher instance. If I was quoting case law, I tried to select such decisions, which are interesting, or vice versa, are contradictory. In the interpretation of the mode of acquisition of ownership I touched a wide range of civil law, from the treaties, through inheritance, the acquisition of property by the authority of the State administration, up to were intolerable.

As I already indicated above, the housing is one of the fundamental human needs. How developed the social relationship to housing, and developed forms of ownership to the housing. Therefore, in addition to the fact that it is flat as a real estate sui genesis, there are various legal regimes and forms of ownership to the housing. In his work, I tried to describe the evolution of the legal relationships to housing and to draw attention to the current adjustment. The aim was to draw attention to the specificities of the legal provisions that address the different legal forms of ownership of apartments.

Peculiarities of real estate compared to the things of the movable is the application of the Intabulation principle. Therefore, the State connects the existence or extinction of predefined rights to property with their registration in a public register – the register of real estate. That's why I took care to provide a brief interpretation of the cadastre, its basic principles, and items that are recorded.

In the second part of my dissertation, I focused on the last published version of the new Civil Code, and find, compare and, where appropriate, to evaluate the proposed part, which regulates the institutes of the ownership of real estate, and the new institutes related to them. Since often it is a different perception of the individual legal institutions, compared to the current legislation, it was not easy work. Notwithstanding the fact that I was referring to the absence of the existence of the case-law, and very few sources, which would explain in detail, where appropriate, the reasons for the new proposed modifications.

As a fundamental change in approach for the design of the new Civil Code, is a proposal for the already referred to the principle of "Seperficies solo cedit", different substantive burdens, the newly-created right of build and other. The result of my work should be disassembly, description and comparison of the legal relations relating to immovable property, with an emphasis on the institutes of the ownership. To give individual and isolated legal institutes in context, explain their genezi and, where appropriate, to try their comparison in relation to the current needs of the Czech society in the 21st century. Also with the help of the case-law to try to answer some questions that remain unresolved or disputed, that the practical life brings.

Furthermore, the aim of my work was independently evaluate and compare the proposed legislation, the new Civil Code with the valid legislation. I believe that some passages of my work can be beneficial, especially in terms of perception and evaluation of the proposed legislation, the Civil Code.

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