

ACQUISITION OF PROPERTY FROM UNLAWFUL POSSESSOR

In my diploma thesis I deal with the issue of the acquisition of property from unlawful possessor as an exception to the traditional civil law principle *nemo plus iuris ad alium transferre potest quam ipse habet* (also called as *nemo dat rule*), the principle, which lays down that no one can transfer more rights than he has himself.

The topic is extremely actual since as of 1st of January 2014 the Act No. 89/2012 Coll., The Civil Code, which – in comparison to the previous legislation – provides diametric changes in the understanding and in the legislation of the property acquisition from unlawful possessor, became effective. Until the adoption of the new Civil Code, the legislation in this area was inadequate and due to dichotomy between Civil and Commercial Code it was also fragmented.

The thesis is composed of an introduction, five main chapters (which are further divided into sub-chapters) and a conclusion. Each chapter deals with different aspects of acquisition of property from unlawful possessor.

In the first introductory part I give my thesis some theoretical fundamentals and define basic terminology used in this paper: property, good faith. I'm also trying to analyze *nemo plus iuris* principle and conflict of protection of property rights with the protection of good faith.

Chapter Three focuses on the development of this legal institute in its historical context. In this chapter I describe Roman law, famous modern codifications from 19th century and the development in the law in Czech lands in the 20th century.

In the third chapter I analyze Czech legislation in respect of acquisition of property from unlawful possessor between year 1989 ad 2013. Old Civil Code was based on the principle *nemo plus iuris* and only minor exceptions were possible. On the contrary, the Commercial Code in its passages concerning the contract of purchase has chosen the opposite approach. In accordance with some part of the doctrine I came to the conclusion that such regulation was in the conflict with the constitutional order. Owners were protected differently and their position unequally depended only on whether the ownership was acquired pursuant to the civil or commercial code. In the third chapter I also provide an outline of relevant Czech case law (decisions of the Constitutional Court and the Supreme Court) dealing with

the possibility to acquire real estate from unlawful possessor. I maintain that the ideological split between the courts is not sufficiently resolved even today.

The key part of the thesis lies in Chapter Four, in which I analyze the provisions of the new Civil Code. I also present new commentary literature and relevant opinions expressed in specialized legal journals. The chapter also highlights the partial deficiencies of the new legislation and offers their solutions.

Fifth chapter is a comparative analysis describing the Italian Civil Code, Portugal Civil Code and Draft of Common Frame of Reference.

The conclusion is a synthesis of previous partial conclusions and findings and summarizes the whole topic.