

The topic of this thesis is the superfiary right of building (and other possibilities of building on the land belonging to a third party, though the focus is primarily on the institution of the superfiary right of building). The principle “superficiis solo cedit” was reintroduced in Czech legislation when the new Civil Code (Act No. 89/2012, Coll.) came into force. Along with this principle, the institution known as superfiary right of building has also returned to Czech law after a hiatus of more than 50 years.

This thesis seeks to provide a comprehensive interpretation of the superfiary right of building, to explain the individual rights and obligations arising from the superfiary right of building, and to compare the institution of superfiary right of building to other possibilities of erecting a building on land which belongs to someone else.

The first chapter defines some of the basic concepts which facilitate the explanation of individual issues and the understanding of certain connections in the following chapters.

The second chapter describes the history of the superfiary right of building, which has its roots in the times of ancient Rome. This chapter also undertakes a characterization of legal regimes which were previously in force on the territory of today’s Czech Republic. Over the decades, the superfiary right of building underwent various modifications, and eventually completely disappeared as a concept of Czech law.

The following three chapters are the core part of this thesis. Here, I expand on the legal grounds for the creation of a superfiary right of building, i.e., in particular, the agreement on the creation of a superfiary right of building, which in practise is the most common approach. Further, this part of the thesis deals with the individual rights and obligations of the contractual parties arising from the agreement on the superfiary right of building. Attention is also paid to the concrete ways in which the superfiary right of building may be terminated, and to the consequences of such termination.

The superfiary right of building is not the only institution based on which it is possible to use a building which has been erected (or is to be built) on third-party land. Chapter Six contains an analysis and comparison of such other institutions with the superfiary right of building. They include, in particular, easements, lease, usufructuary lease, precarious loan, and loan for use. Among these, the usufructuary lease is the most similar to the superfiary right of building in conceptual terms.

The penultimate chapter deals with foreign legislation of the superfiary right of building, specifically Austrian and German legislation. The last part of this thesis is focused on the use of the superfiary right of building in practise, taking into account also the use of this institution in foreign countries.