

Abstract of the doctoral thesis entitled: “Restriction of right of ownership for environmental protection reasons – a comparative study of legal systems”

The right of ownership and the exercising of the right of use resulting from this rank among the fundamental human rights and are to be universally observed. However, due to its very nature, the individual's right of ownership has to be restricted. On the one hand, in order to ensure the exercising of the right of ownership and other basic rights by other legal entities. On the other hand, in order to ensure the enforcement of matters of public interest. One of the most important matters of public interest, which requires the restriction of the right of ownership, is the protection of the environment.

The subject of this thesis is the restriction of the right of ownership for environmental protection reasons and is based on a comparison of the legal systems of both Switzerland and the Czech Republic.

This thesis, written in the Czech language by the jurist who graduated in law at the Law Faculty of the University of Zurich, is intended in particular for jurists and other interested parties from the Czech Republic. This is why the author pays special attention to the formulation and representation of the legal framework governing the restriction of the right of ownership for environmental protection reasons in Swiss law. He then presents the framework's principal features while taking into account at the same time the relevant regulations as well as the current jurisprudence and jurisdiction. At the cantonal level, it is the law of the Canton Zurich that is taken into consideration.

The thesis opens with a brief overview of the authorisation procedures, regulated by the constitution, between the Federal Government, cantons and local authorities. This knowledge is essential for understanding the legal framework in Swiss law. The pursuing chapters deal with the institution ownership, ownership guarantee and the various ownership restrictions under public and private law and their consequences. In particular, they address matters of compensation as well as the instruments and measures of territorial planning as a means of restricting ownership rights.

The subsequent chapters are devoted to the specific restrictions of ownership rights (and any obligations resulting from these for landowners) imposed to protect the environment and its natural resources. The restriction of ownership rights is dealt with especially with regard to the environmental protection

- of the ground from physical, chemical and biological changes;
- of the forest in its spatial distribution and the safeguarding of its functions (protective-, beneficial- and useful functions) as well as the result of obligations under public law in the management of the forest;
- of water sources above and below ground and the safeguarding of their purity as well as the health of humans, animals and plants with regard to effluents from households, industry and agriculture;
- and the promotion of the conservation and care of native landscapes and the overall appearance of localities, of historic sites, of natural and cultural monuments and especially fauna and flora, their natural habitats as well as maintaining biological diversity.

The final section of the thesis provides a summary of the results as well as discusses suggestions for ways of optimising environmental protection in the legislation of both the legal systems under comparison in this study.

In a short abstract of the findings of this differentiating comparative law study, the following can be recorded:

The Czech Republic is conceived as a unitary state with a uniform law. A constitutionally regulated authority power between the federal, cantonal and local authorities, as exists in Switzerland, is unknown.

Both jurisdictions are based on the structures of a democratic state as well as the recognition of basic rights, with the right of ownership being enshrined in both countries' constitutions.

In Switzerland, it is the principle of acquisition that is applicable with regard to property ownership (with several exceptions), i.e. the principle by which the constituent parts of a property, as for example a building, share the legal fate of the property. Under current jurisdiction, this principle does not apply in the Czech Republic; however its re-inclusion in the to be revised Civil Law Code is planned.

The restriction of property rights for reasons of environmental protection is essential in both countries because of the divergent interests of the landowners and the public, and many of the aims of environmental protection can only be enforced by restricting property rights. A common feature of both legal systems is that as a rule the extensive expropriation as ultima ratio is only enforced if no less drastic solution (as for example a justification or a

suspension of an easement, a restriction of ownership under public law or a public-service contract) is possible. Both countries only recognise a restriction of the right of ownership rights when a legal basis exists, in matters of public interest and with due regard to the principle of proportionality.

In the case of major interventions the matter of compensation is also a further prerequisite respectively a consequence of the restriction of the rights of ownership. With regard to the settlement of compensation as a result of the restrictions on the rights of ownership, the legal system of the Czech Republic plays a leading role since it acknowledges even claims arising from impediments to farming, forest management and the fishing industry in connection with environmental protection. However, the Czech Republic does not have an equivalent of the federal legal concept of material expropriation or of the subsequent damage claims as such. The criteria used to ascertain the degree of compensation is practically the same in both countries.

The possibilities of enforcing guaranteed property rights are governed by different regulations in the two countries. In contrast to the Czech Republic, Switzerland knows no constitutional court, and the Federal Laws are legally binding for everyone. Nor has it yet ratified the First Additional Protocol to the European Human Rights Convention. Thus it is not possible to appeal to the European Court of Human Rights - which assesses the protection of property and any claims for compensation not according to the respective national laws but in application of the rules of interpretation of the European Human Rights Convention - against an unfavourable decision of the Federal Supreme Court of Switzerland. To that effect, the legal implementation is restricted in Switzerland.

Land-use planning is differently solved with respect to objectives, scale and the territorial organisation of the country, and provides an important tool in addition in Switzerland in the enforcement of environmental protection. In the process of land-use planning, the right of ownership is restricted with regard to natural resources such as soil, forest, water sources as well as nature and cultural heritage protection. In the Swiss legal system, it is precisely the land-use planning (development and usage planning) where the extent and usage possibilities of a piece of land is bindingly determined. In Czech law too, the individual requirements of protecting natural resources are incorporated in land-use planning, and the restriction of the right of ownership occurs also in close coherence with land-use planning.

The environment and its natural resources enjoy wide-ranging protection in both legal systems. Likewise, the possibilities of restricting ownership rights with which this protection is to be guaranteed. The starting positions concerning the protection of soil differ in both

countries in as far as, the environment and in particular the soil was heavily polluted during the communist regime. In contrast, soil pollution in Switzerland has been continuously restricted since the introduction of the environment protection law of 1955. Corresponding laws have only applied in the Czech Republic since 1989. The current regulations provide a comparably high level of protection against soil pollution in both countries. From time to time, this protection is secured in both countries by means of regulations governing the prevention of water pollution and the leakage of effluents.

The Czech Republic legal system does not recognize the dynamic Swiss forest concept. Although it contributes to the spread of forest land, it also causes legal uncertainty (which can only be eliminated by a determination process).

The environmental protection in Switzerland also includes cultural heritage. This is in the Czech Republic separated from nature conservation, subordinate to the Ministry of Environmental Protection, and attached to the Ministry of Culture. Both countries are bound by numerous international treaties governing the protection of nature and the countryside. As a Member State of the EU, the Czech Republic is also subject to EU Laws and accordingly the legal framework governing the protection of nature is multifaceted. The legal framework for the nature conservation in both countries maintains a high standard.

In this comparison of the two legal systems, a number of common or similar, as well as differing solutions and regulations with regard to the restriction of property rights for reasons of environmental protection can be detected. Taken as a whole, both countries pursue the same goal, which is to maintain and promote a sustainable environment and to ensure its protection for the present generation and all those that follow.

The thesis takes into account the legal situation prevailing as of 31st January 2012.