

8 RESUMÉ

An ownership of flats and non-residential premises means in the Czech legal system a specific form of a joint ownership (it consists of the ownership of a flat or a non-residential premise together with accessorially attached joint ownership of common spaces of a house, in some cases also the joint ownership of a land) with an extra regime of execution of rights and duties which results from this kind of the joint ownership of a house with its housing units.

The valid legal regulation of the ownership of flats and non-residential premises is contained in Act no. 72/1994 Collection of laws, which co-ordinates some joint ownership regulations to houses and some ownership regulations to flats and non-residential premises and adding some other laws (later on just “the Flat Ownership Act”).

The Civil Law Code, Act no. 40/1964 Collection of laws, is the starting point for legal regulation of flats and non-residential premises. In accordance with the Civil Law Code, the flat and the non-residential premise can be an object of especially obligation relationships. The Civil Law Code statements respect the fact that the flat and the non-residential premise are not separable parts of a house and therefore their ownership formation as an individual and separate thing (as a real object of the owner’s right according to the Civil Law Code) is possible only if all the conditions given by the extra law are fulfilled there. The flat Ownership Act is the extra law regime.

It is necessary to distinguish the flat and the non-residential premise as an object of obligation relationship according to the Civil Law Code and the flat and the non-residential premise as an object of the ownership according to the special law Flat Ownership Act. The flat as the object of the ownership according to the special law regime is not the same as according to the Civil Law Code. The Flat Ownership Act uses special term a “unit”, a housing unit. A relationship connected with the unit is managed by the Civil Law Code and other laws that deal with real properties. It is necessary to mention that nowhere in the Czech legal system is said the housing unit is the real property. The flat and the non-residential premise (both

also called the “unit”) are not considered to be the real property until a new Civil Code (now in a preparatory stage) superseding the Civil Law Code from 1964. The statement dealing with “units” will stay (as up to now) in the extra law.

My rigorous thesis begins with a preface followed by historical points connected with the unit’s (flat’s) ownership and a registry of the real property.

Other part of the rigorous thesis deals with an idea of the flat ownership that is connected with a flat building up, then I explain a concept of the flat ownership, a concept of the ownership in general including a content of owner’s right, a concept of the housing unit according to the Flat Ownership Act, a formation and extinction of the flat ownership, including protection of the flat ownership. In this part I also set forth a brief introduction into legislation of a flat transfer in the housing co-operatives as well as an introduction into legislation of the flat ownership and housing co-operatives in some chosen European states.

Following chapter treats a contract of construction including kinds of records to the land register (a valid legislation of records to the land register and specific questions of recording a house built up according to the contract of construction), about individual kinds of constructions in regime of the Flat Ownership Act. These can be a building up a new house with units (flats), a placing in a house, a conversion of a house, an outbuilding of a house, reconstruction changes in a house in the case where the size of a flat can change to the detriment of common places and other reconstruction changes in a house which can cause changes in inner parts of a house.

A land register is connected with a question of the ownership set forth above therefore one chapter is about the land register, about contents of the land register, about kinds of records to the land register and about principles of recording in the land register.

To sum it up, I try to evaluate a validity of legislation, I state some weaknesses of the validity of legislation and I set forth ideas “de lege ferenda” of legislation of the flat ownership which can be an inspiration for the consideration about later evolution of the legal regulation of this field in Czech Republic. In this chapter I can not leave out the consideration of the completely new Flat Ownership

Act preparation. It is comparatively extensively rewritten because of the consequences of the professional discussions, recent experiences as well as because of the intention of re-codification in the Civil Right field. For example a contract regulation of a construction belongs among prepared changes. Furthermore, the concept of owners' partnership of (housing) units and its legal regulation is given by obligatory statute but in future it should be as rights and duties in statements of the new Flat Ownership Act. Till now the Flat Ownership Act misses this statute regulation, however rights and duties could be given just by law that is why this imperfection should be superseded.

The rigorous thesis contains also an example of construction contract and it presents an appendix to the thesis.