Czech Private Law

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REAL ESTATE IN CIVIL LAW

Basic Legal Concepts

Since the concept of 'real estate' ("nemovitost") is derived from the wider notion of a 'thing' ("věc"), the conception of the latter in the Czech law needs to be described first. European legal systems differentiate between those systems that use the concept of a 'thing' in the wide sense of the word, i.e. including movable and immovable (and real estate) objects and rights (e.g. in Austria, France, Belgium, Italy, Spain, Portugal, Great Britain, etc.)[1], and those that use the concept in the narrow sense of the word, i.e. including only movable objects (Germany, Greece)[2]. The Dutch Civil Code has adopted a different position which operates with the general category of 'estate' (property), subsuming things and property rights including intellectual ownership[3].

The current Czech law is based on a general notion of 'objects of legal relations'. These are further subdivided, under the legal definition in Section 118(1) of the Civil Code, into things and, if their nature allows, into rights and other property values. Real estate thus forms a part of the definition of a thing in the narrow sense. Czech law does not operate with the term of 'law of construction', which simplifies the categorization of buildings within the individual objects of legal relations.

1 "Anything that may become an object of legal relations is called 'a thing'" (Article 202, section 1 of the Portuguese Civil Code of 1966).
2 Cf. generally Section 90 of the German BGB or Article 947, Section 1 of the Greek Civil Code.
3 Cf. Article 3:1 of the Dutch Civil Code.

The Civil Code accords a special regime to flats and non-residential premises, which can, under the special regime[4], be considered as (relatively) independent objects of legal relations, although they do not, from the point of view of the general conception of a thing, meet the requirements of being assessed as 'independent things' in the legal sense[5]. In such a case, their regime is subservient to the regime of immovable objects.

Objects of legal relations are constituted, above all, by things. Under the Czech law, things in the legal sense of the word are considered to be controllable movable objects and natural elements that are useful (i.e. they serve the needs of humans).

Things can be classified according to various criteria, with the most important division being into movable and immovable things (cf. Section 119(1) of the Civil Code, Act No. 40/1964 Sb., as subsequently amended). Section 119(2) of the Civil Code provides a definition of immovable things such as plots of land and buildings connected to the land by a solid foundation. All other things constitute movable things. The separation of movable and immovable things plays a role in, for instance, the acquisition of ownership title.

a) A Plot of Land ("pozemek")

A plot of land is considered to be an individualized part of the surface of the Earth regardless of what substance it is covered with (agricultural land, built-up area, watercourses, etc. Section 27 of the Act No. 344/1992 Sb. defines a plot of land as a part of the surface of the Earth separated from its neighboring parts by a boundary of a regional administrative unit or a cadastral area, a boundary of ownership, a boundary of possession, a boundary of types of plots of land, or a boundary constituted by the manner in which the plots of land are used.

The expression 'lot' ("parcela") is often used, especially in common usage. A lot is a plot of land which is determined by its position and geometry, depicted in a cadastral map and identified with a lot number (cf. Section 27 of the Act No. 344/1992 Sb.). A 'building lot' ("stavební parcela") is a plot of land identified within the category of 'built-up area and courtyards', while a 'plot-of-land lot' ("pozemková parcela") is a plot of land that is not identified as a building lot. The 'lot area' ("výměra parcely"), rounded to whole square meters, is the expression of the overlap of a plot of land into the plane of depiction in surface measure. The size of the lot area is based on the geometric delimitation of a plot of land. Such a numerical statement of the lot area, however, does not constitute binding data for the purpose of the real estate registry.

4 Ownership under the Act No. 72/1994 Sb. on the Ownership of Apartments, or Lease.
5 Cf. Section 118(2) of the Civil Code.

b) Construction ("stavba")

Legal regulations use the concept of a 'construction' on the basis of two distinct conceptions originating in civil law on the one hand and building law on the other. The two conceptions are frequently confused, which gives rise to numerous misunderstandings and conflicts, ultimately based on the crucial problem of defining what 'a construction' actually is.

The provisions of the building law can be divided into two groups:

ba) First, there are regulations governing the construction and the steps involved in the process of construction. These, however, do not define the notion of a 'construction' itself. These regulations provide the procedures for the establishment, use, change or removal of a construction, regulate the situation when a construction is in a different place than it should be or is different from what it should be, when it is not authorised, when it threatens something, etc. The Construction Act No. 183/2006 Sb. (effective from 1 January 2007) characterizes a 'construction' as all building objects created by means of construction or assembly technologies, regardless of the following: their structural and technical design; the structural products, materials and constructions used; the manner of their use and the length of their use (a 'temporary construction' ("dočasná stavba") is any structure whose period of use is pre-limited by the building office, while an 'advertising construction' ("stavba pro reklamu") is any structure that serves the purpose of advertising). In this connection, it needs to be pointed out that when the Construction Act uses the notion of a 'construction', this may variously be also meant to refer to a part or a modification of a finished construction.

bb) Second, there are regulations stipulating categories of constructions, e.g. main and auxiliary constructions, surface and underground constructions, simple constructions, line constructions, as well as permanent and temporary constructions. This group of regulations also includes provisions on certain types of constructions requiring special duties in their design, placement and realization (cf. the abolished Regulation No. 132/1998 Sb. on the General Technical Requirements for Building). However, these provisions do not offer any definition of a 'construction' either. As regards to this group, it is worth noting that until 31 March 1964, the division of constructions into permanent and temporary ones was linked to civil law provisions in the following manner: permanent constructions were classified as immovable things while temporary constructions were classified as movable things (from the point of view of the present situation).

Nevertheless, civil law regulations do not contain any specific delimitation of the notion of a 'construction' either, although they do operate with this term on several

occasions. This concerns, above all, the aforementioned division into movable and immovable constructions ("movité a nemovité stavby"; Section 119(2) of the Civil Code), and, importantly, the issue of 'component (integral) parts of a thing' ("součásti věci"; Section 120) and 'accessories to a thing' ("příslušenství věci"; Section 121). The conceptions of a 'construction' are not identical in civil law and in building law, although it appears from the character of the civil legal relationships that such relationships can apply only to constructions that form a thing in the legal sense (Section 118). Any construction not constituting a thing in the legal sense cannot be an independent thing and, consequently, it cannot have its own legal life.

Regarding the notion of 'construction' in civil legal relationships, it is not decisive whether the creation of the construction was subject to a building permission or whether is has been officially approved after its completion by means of issuing an occupancy permit. Any construction object needs to be considered as a construction if it is at such a building stage when the layout of at least the first ground floor is apparent in a clear and unmistakable manner. From such a moment on, any subsequent building work is aimed at the completion of a thing that has already come into existence, i.e. a thing that is owned by someone and may constitute an object of legal relationships.

Building regulations understand the notion of a 'construction' in a dynamic sense as an activity or a set of activities aimed at the realization of a product (and sometimes even the product itself). By contrast, a 'construction' needs to be understood in a static sense for the purposes of civil law – as a thing in the legal sense, i.e. as the result of a certain building activity which may constitute an object of legal relationships.

An independent thing in the civil law conception is not constituted by annexes (or loft extensions) ("přístavby" and "nástavby") and building modifications (such as make-overs and built-in constructions) ("přestavby" and "vestavby"). Similarly, it is not decisive who the building permission is issued to, since all these are parts of an existing construction. However, the simple act of identifying a construction as an 'annex' (from the point of view of the building law) does not mean that the construction built forms a part of some other constructions because what needs to be judged is the completion of the characteristic features of a 'component part of a thing' (see below).

A 'licensed construction' ("povolená stavba") is any construction built on the basis of a building permission in which the building office had specified certain binding conditions for the realization and use of a construction. Any construction that was built without a building permission or in conflict with a building permission is an 'unlicensed construction' ("nepovolená stavba"). The consequences linked to unlicensed constructions are specified in Section 178 and subsequent sections of the

Building Act (in case of a wrong or an administrative infraction) and Section 129 and subsequent sections of the Building Act (with the possibility of ordering a removal of such a construction). An 'unlicensed construction' ("nepovolená stavba") needs to be distinguished from an 'unauthorized construction' ("neoprávněná stavba") – the latter occurs when a builder builds a construction without having, from the point of view of civil law regulations, the relevant authority to do so (i.e. lacking the relevant right to the plot of land which would enable the builder to erect a structure on the plot of land). The consequences of unauthorized constructions are provided in Section 135(c) of the Civil Code and their regime is decided upon by the court.

c) Component Parts of a Thing ("Součást věci")

Under Section 120(1) of the Civil Code, a component (integral) part of a thing is anything that pertains to a thing by its nature and cannot be separated from it without reducing the value of the thing (i.e. the principal thing). Judicial practice unequivocally stresses that a component part of a thing cannot constitute an object of independent agreements or civil legal relationships. A component part is always in the ownership of the owner of the principal thing and therefore it shares the legal life of such a thing. Since a component part of a thing (albeit initially independent) becomes a part of some other thing (the principal thing) as a result of their physical connection, the ownership of a part of a thing is acquired by the owner of the principal thing even in those cases where the expenses connected with the incorporation or the purchase of the component part of the thing are borne by a person different from the owner. The legal prerequisite for a component part of a thing is its inseparability without the simultaneous devaluation of the principal thing, without any regard to whether the component part itself becomes devalued as a result of the separation. The devaluation of a thing cannot be understood in the narrow sense of the word, i.e. as a destruction of or a substantial damage to the principal thing as a result of removal of the component part; by separating a part of a plot of land, the plot of land as the principal thing does not typically suffer any physical damage (devaluation), but its price decreases. The devaluation can thus be understood as the reduction of the value and, typically, the price of a thing. The devaluation may also mean that a thing will perform its function on a lower level ('functional devaluation') and even that its appearance will be debased ('aesthetic devaluation').

Under the current Czech law (as opposed to some legal regulations in the past), a construction is not a part of the plot of land (i.e. the principle of '*superficies solo non cedit'* is applied). A construction is always an independent thing, but only from the moment when it becomes a thing in the legal sense. Component parts of a construction are constituted by its annexes, extensions and building modifications – built-in constructions. Component parts of a plot of land are, in the sense of Section 120 of the Civil Code, also exterior modifications – support walls, pavements,

curbs, water and sewage pipes, flower ponds, exterior stairs, etc. In individual cases (depending on the manner in which the construction is made), judicial practice considers the following as component parts of some other real estate: melioration devices, terraces, exchange stations, some roads and, e.g. deposits of unclaimed minerals.

Component parts of plots of land, however, also include their vegetation cover, unless special regulations provide that the ownership of such vegetation cover is different from the ownership of plots of land.

d) Accessories to a Thing ("Příslušenství věci")

The term 'accessories to a thing' is generally delimited in Section 121(1) of the Civil Code. This provides that accessories constitute independent things that are not component parts of a thing. Accessories are characterized as things that belong to the owner of the principal thing and are designated by the owner to be used permanently together with the principal thing.

The principal thing and accessories to the thing are owned by the same entity.

For a thing to be considered as an accessory to a thing, it is not decisive whether it is connected to the principal thing in a technical way or not. This criterion is important mainly when considering constructions of various types (e.g. barns, fences, greenhouses, sheds), and various devices (water and sewage pipe lines, etc.)

Some constructions can be classified in both ways (e.g. an independent garage): they can constitute both an accessory to a principal construction and an independent thing.

If a thing is classified as an accessory, it shares the legal life of the principal thing and is transferred together with the principal thing to a person acquiring its ownership. In case of any doubt, especially when transferring real estate, accessories to a thing need to be individually stated and sufficiently identified in an agreement.

Under Section 121(2), appurtenances to a flat are auxiliary rooms and premises designated to be used together with the flat. Auxiliary rooms include, above all, chambers, bathrooms, toilets, larders, dressing rooms, as well as kitchen nooks and entrance halls that are separated in their structural design. Auxiliary premises are considered to be, among others, cellar boxes.

Ownership Title

Ownership title is one of the most significant kinds of property rights. It has an absolute nature and is characterized by its elasticity (when ownership title is

limited, e.g. by an easement, it comes to assume its original extent upon the removal of the limitation). Ownership titles of all owners have the same legal content and protection (cf. Article 11 of the Charter of Fundamental Rights and Freedoms) and are uniform (modern legal regulations do not any longer distinguish kinds and forms of ownership; in the past, ownership was structured into various kinds and forms and classified into, e.g. personal, private and social ownership; this distinction was applied in the process of evaluating things). The basic regulation of ownership is included in the Civil Code.

The content of the subjective ownership title is constituted by a set of specific entitlements belonging to the owner of a thing. This set is traditionally known as the 'ownership triad':

a) the right to use a thing and enjoy its fruits and proceeds;

b) the right to dispose of a thing;

c) the right to hold a thing.

The content of the ownership title includes certain obligations on the part of the owner. The construction of the legal regulation is based on the notion that ownership entails obligations (cf. Article 11, section 3 of the Charter of Fundamental Rights and Freedoms). All owners are obliged to respect the prohibition of exercising their ownership titles to the detriment of the rights of others, as well as the prohibition of any conflict of such rights with general interests protected by law. The exercise of one's ownership title must not harm human health, the nature and the environment beyond limits set by law.

Ownership title may be limited only with the approval of an owner, otherwise only on the basis of a law and mainly in the public interest (under Section 128 of the Civil Code, an owner is obliged to allow use of a thing to the extent necessary and for the necessary period of time, and for compensation, in the case of emergency or urgent public interest, where the purpose cannot be attained otherwise. A thing may be expropriated or ownership title may be restricted in a public interest where the purpose cannot be attained otherwise, but only on the basis of law, solely for the said purpose, and for compensation).

Restrictions of ownership that are applicable under certain conditions to all owners and arise directly from legal regulations constitute certain internal limitations and tend to be identified as 'conceptual restrictions'. Restrictions of ownership that are connected with certain specific legal relationships of ownership originate outside of the ownership relation and arise mainly from the conflict of a specific ownership title and other legal relationships (mainly other ownership titles) may be identified as real limitations of ownership title. The latter group includes also those limitations

that arise from the regulation of the so-called 'neighborhood law' (cf. Section 127 of the Civil Code).

There is the rule, above all, that every owner of any movable or immovable thing must abstain from anything that might cause annoyance to an unreasonable extent to another person or seriously jeopardize the latter's exercise of his rights. This general principle is specified by the Civil Code by enumerating the kinds of interference (the owner may not, above all, put at risk his neighbor's building or plot of land by making alterations to his own plot of land or to any building erected on such land without having taken adequate measures in respect of proper reinforcement of his building or other appropriate measures in respect of his plot of land; the owner may not vex his neighbors to an unreasonable extent by noise, dust, ashes, smoke, gases, fumes, odors, solid or liquid waste, light, shadows and vibrations (so-called 'imissions'); the owner may not let any breeding animals enter adjacent land; and he may not, inconsiderately or in an inappropriate season, remove tree roots from his soil or cut tree branches that overhang his plot of land (so-called 'undergrowth' and 'overhang')). The Civil Code also regulates the possibility of imposing the duty to fence off one's plot of land (where necessary and where it does not obstruct effective use of plots of land and constructions, the court may decide, after first establishing the opinion of the competent building authority, that the owner of a certain plot of land is required to fence it off); as well as the duty to provide access (owners of adjacent plots of lands are obliged to provide, for the necessary time and to the extent necessary, access to their plots of land or, as the case may be, the constructions located in such plots of land, if such access is necessary for the maintenance and management of adjacent plots of land and constructions; where any damage to the plot of land or the construction occurs, the person who caused the damage is required to compensate it, such person cannot relieve himself of this liability; the civil law regulation of entry to a plot of land does not concern the regulation of similar authorizations included in special regulations).

Acquisition of Ownership

Ownership title may be acquired in various ways (called legal reasons) that are subject to various classifications. First of all, the original acquisition needs to be distinguished from derivative acquisition. The ground for this distinction is whether the person acquiring the right derives his or her ownership title from a previous owner or not – either because the right is acquired independently of such an owner / the ownership title is created for the first time (original acquisition), or because the new owner enters into the rights and obligations of his precursor, i.e. derives his legal position from the previous owner (derived acquisition). Original acquisition includes confiscation, separation of fruits, creation of a new thing (including the creation of

a new construction), etc. Derived acquisition includes, among others, inheritance, purchase and sale, donation, exchange, etc. Another criterion distinguishes between the transfer ("převod") and the passage ("přechod") of ownership (in common speech, these terms are frequently misused). A transfer refers to the acquisition of ownership title on the basis of a manifestation of one's will (e.g. by means of a purchase agreement), while a passage refers to the acquisition of ownership title on the basis of some other legal facts (on the basis of a law, by decision of an official body). A transfer of ownership title is regulated by the principle that no one can transfer more rights to any other person that he or she actually has. This means that ownership may be acquired only from an owner of a thing and, together with the transfer; any faults on the thing itself, such as easements, rights of lien, etc. are transferred as well. Ownership title may be acquired only in the extent to which the original owner held it (the Civil Code breaks this principle in Section 486 with respect to the acquisition from a so-called 'sham heir'). Forms of acquisition of ownership are specified in Section 132 of the Civil Code, which provides that ownership may be acquired on the basis of a purchase agreement, contract of donation or some other contract, by inheritance, by decision of a state authority or on the basis of other facts laid down by law.

Acquisition on the Basis of Contract

As regards the acquisition of ownership on the basis of contract, it is important to distinguish whether the legal system accords the effect of transfer or the effect of obligation to the contract. In the former case, the transfer of ownership is realized by the contract itself (its effect). In the latter case, the contract is merely a legal title giving rise to the obligation to transfer the ownership title, while the actual transfer occurs only on the basis of some other legal fact (this fact is then called 'the manner of acquisition'). This is, above all, the hand-over and the take-over of a thing, and 'intabulation' (i.e. entry into public records) in the case of immovable things. Under the Czech legal system, contracts typically have only the effect of obligation.

Where an immovable thing (real estate) is transferred, ownership title is acquired upon the entry into the real estate registry, unless provided otherwise by a separate act (the exception applies in the case of a transfer within the so-called 'large privatization'). The entry is made on the basis of a decision issued by the land registry office after inspecting the relevant agreement as regards certain specified criteria. The legal effects of the entry come into existence on the basis of a final and conclusive decision on the entry of the right as of the day the motion for the entry is delivered to the land registry office. An entry is constituted by a record in the real estate registry. However, in the event of a transfer of real estate which is not subject to registration in the real estate registry, ownership is acquired at the moment when the relevant agreement takes effect.

Purchase Contract

The most frequent manner of acquiring ownership to real estate is by purchase contract. If the purchase contract concerns real estate, then the regulation in Sections 588 to 600 of the Civil Code is applied even in cases where the contract is signed by entrepreneurs.

A purchase contract for real estate must be in writing and the declarations of the wills of the contracting parties must be on the same document. Any deficiencies in the legal form of a purchase contract result in the nullity of such a contract.

The contract must identify the parties by means of designations required by cadastral regulations, specify the subject matter of the purchase (also by means of identification features used for registering the real estate in the real estate registry), and agree on the purchase price. The subject matter and price represent the essential elements of a purchase contract and are obligatory in such a contract. Other data are optional: a purchase contract for real estate may include some auxiliary understandings corresponding to its nature, such as the pre-emptive right of purchase (of material as well as obligation nature) or the right of a back purchase.

The contents of a purchase contract consist, above all, of the duty of the seller to hand over, properly and in time, the subject matter of the purchase to the buyer, and the corresponding duty on the part of the buyer to take over the subject matter of the purchase. The buyer is obliged to pay the purchase price properly and in time. The seller is obliged to inform the buyer, when signing the contract, of any faults on the thing that the seller is aware of. If any fault that the seller did not inform the buyer of becomes subsequently apparent, then the buyer is entitled to a discount from the price of the real estate. If this concerns a fault that makes the thing unusable, the buyer has the right to withdraw from the contract. However, if the seller assures the buyer that a thing has certain properties or that a thing is without any faults, and such a statement subsequently turns out to be false, then the buyer may always withdraw from such a contract.

Apart from a purchase contract, a **contract of exchange** may be concluded concerning a mutual exchange of real estate. Such a contract is reasonably regulated by similar legal regulations as the purchase contract.

Pre-emptive Right of Purchase

Real estate is often subject to pre-emptive right of purchase. It is generally described in the Civil Code (Section 602 and subsequent sections).

The pre-emptive right of purchase may be characterized as a legal relation of obligation, whose subjects are constituted by the obligor and the obligee. The content of this relation is mostly the right of the obligee to be offered by the obligor a certain object for purchase should he wish to alienate it, and the obligor's obligation corresponding to this right. The purpose of the pre-emptive right of purchase is to secure the superior position of the obligee for the acquisition of the subject matter of the pre-emptive right of purchase. Such acquisition, however, does not occur automatically – it is dependent on the volitional behavior of both subjects. The first requirement is the obligor's will to alienate the subject matter of the pre-emptive right of purchase, while the second requirement is the obligee's will to acquire the thing.

According to its effect, it is suitable to distinguish the following kinds of pre-emptive rights: personal pre-emptive right of purchase ("osobní předkupní právo") and material pre-emptive right of purchase ("věcné předkupní právo"). They may be briefly characterized as follows: Personal pre-emptive right obliges and binds only the parties to the contract, while material pre-emptive right does not place the obligation to offer the subject matter for purchase only on the person signing an agreement on the pre-emptive right of purchase but also its legal successor.

The pre-emptive right of purchase may arise mainly on account of the following legal reasons:

a) on the basis of a contract,

b) by operation of law.

The content of the legal relation is mainly the obligation to offer the subject matter for purchase and the right to buy such a subject matter. Both the first and the second rights are correlative: what corresponds to them is the right to be offered the subject matter and the obligation to suffer the purchase of a thing or, as the case may be, the obligation to sell the thing. The duty to offer the thing for purchase is both on the part of the person who promised to make such an offer (cf. Section 603(1) of the Civil Code) and on the part of a person who is a subject of the ownership title with which this obligation is connected (if the obligation has material legal character, i.e. it is attached to a thing). The obligation arises at the moment when such a subject decides to sell the subject matter of the pre-emptive right of purchase, and its content is the obligation to make an offer. The offer must have certain elements; it may, basically, be stated that it must contain all conditions under which the purchase agreement should be concluded, including the written form if it concerns the pre-emptive sale of real estate (cf. the 3rd sentence in Section 605 of the Civil Code). The extent of such conditions will also depend upon the original agreement which may have previously specified some of these conditions (e.g. the price). The offer is a unilateral, addressed act by the obligor and becomes perfect upon its delivery to

the obligee. It is from such a moment that time limits for the implementation of the sale commence to run. If the offer fails to meet the requirements specified, it cannot cause its legal effects; this concerns, above all, the failure of the commencement of the time limit for realization of the pre-emptive right of purchase.

Acquisition by Inheritance

The Civil Code specifies inheritance in its Part VII (Section 460 and subsequent sections). What is essential, as regards the acquisition of ownership title, is that the passage of ownership to heirs occurs upon the death of the deceased. This is the so-called 'principle of descent' (as opposed to the decedent's estate *hereditas iacens* where inheritance is acquired by its transmission).

Acquisition by Means of a Decision of a State Authority

This concerns a decision issued by a court, a land registry office, a building office, etc. According to Section 132(2) of the Civil Code, in such cases, i.e. where ownership is acquired by a state authority's decision, it is acquired on the day stated in that decision. If the day is not stated, then ownership is acquired on the day when the decision comes into legal effect. The Civil Code regulates some special cases of acquisition of ownership title by a state authority's decision, e.g. as regards the judicial decision to cancel and settle common property (Section 142), the order to transfer ownership title to an unauthorized construction (Section 135c(2) – only if the ownership of construction transferred to the owner of the plot of land), and the sale of real estate and movables ordered by a court in the execution of judgment, etc.

Acquisition on the Basis of Other Facts Specified by Law

The facts, on the basis of which ownership title is acquired, are provided in both the Civil Code and other legal regulations.

a) The Civil Code regulates the acquisition of ownership title to **accretions of a thing** ("přírůstky věci"; Section 135a). This is an entitlement arising from the content of ownership title. In this connection, accretions form an independent subject of ownership title only after they become separated from the original thing. If they are not separated, they form a part of the principal thing. The ownership title itself is acquired only upon separation. A similar nature is shared by acquisition through accession, i.e. to everything that was

subsequently connected with the principal thing (at present, this manner of ownership acquisition is not regulated in the Czech legal system, but it could occur in the case of real estate in connection with, e.g., objects washed up by water).

b) A special form of acquisition of ownership title is constituted by **prescription** (usucapio, acquisitive prescription, "vydržení"). The requirements for prescription are, according to Section 134 of the Civil Code, as follows:

– a competent subject (prescription can result in the acquisition of ownership title in the case of both natural and legal persons),

– a competent subject matter (any object may be acquired by prescription that is subject to the right of ownership except for things that may be only in the ownership of the state or legal persons specified by law),

– lawful possession (disposition of a thing in the same way as of one's own, with view to all the circumstances that the thing belongs to its holder),

– the passage of the period of prescription period, which is:

– 3 years in the case of possession of movable things,

– 10 years in the case of possession of immovable things,

– the possession must be uninterrupted for the entire length of the prescription period; any relevant loss of possession means the termination of the prescription period; the prescription period may include the time for which the legal predecessor had the thing in his or her lawful possession.

Where all the above-mentioned criteria are met, original acquisition of ownership title by law occurs. Because the ownership is acquired by law, no assertion or decision is necessary and any potential judicial statement has only a declaratory nature. In the case of immovable things, the person acquiring his right by prescription will be entered in the real estate registry as the owner.

c) One of the forms of acquisition consists of **processing** ("zpracování"; Section 135b of the Civil Code).

d) In connection with the changes in the area of regulation of the civil law, the role of acts (statutes) as a direct form of acquisition has increased. Under the Act No. 509/1991 Sb. (effective from 1 January 1992), the right of personal use of plots of land existing as of that date was transformed into the right of ownership. What was decisive for the precise determination of ownership to a plot of land was the state of the relationship of use and the nature of the plot of land (built-up area or land without any construction). Where a plot of land was in the personal use of an individual, the ownership title arose only

for that particular individual. Where a plot of land was commonly used by several persons, what mattered was whether the plot of land was built-up or not: plots without constructions gave rise to apportioned common property of a plot of land (with identical shares), while built-up plots of land gave rise to apportioned common property of a plot of land with shares corresponding to the individuals' shares to the construction (in case of doubt, the size of shares is determined by mutual agreement; in the absence of any agreement, the size of shares is determined by courts). Where a plot of land was in the common use of spouses, this gave rise to unapportioned (joint) common property of spouses (joint property ownership, "bezpodílové spoluvlastnictví") if their relation continued. If their joint property ownership terminated, then spouses became common co-owners of a plot of land with identical shares.

The law as a form of ownership acquisition was likewise applied in the case of some transformation and restitution regulations, such as the acquisition of property by municipalities (the Act No. 172/1991 Sb., as subsequently amended).

e) Acquisition titles play a role when dealing with the regime of unauthorized constructions. The Civil Code considers the owner of a construction to be its builder, but certain sanctions may be applied which modify such a principle. Such sanctions are decided by the court and may be as follows:

   – the order to remove the construction at the expense of the owner (the ownership title will terminate),

   – the order to assign the ownership to the owner of the plot of land in return for a compensation, as long as the owner of the plot of land agrees with such a solution – this procedure is possible only if the removal of the construction is not practical.

It needs to be stated, for the sake of completeness, that if a court fails to apply any of the two sanctions mentioned above, the ownership title to a construction stays with the builder. The court has the opportunity to regulate the relations between the owner of the plot of land and the owner of the construction, above all establishing, in return for compensation, an easement necessary for the exercise of one's ownership title to a construction, or, as the case may be, create the right of entry and access.

Termination of Ownership Title

Ownership title may be extinguished as a result of various legal facts that may be sorted out according to specific criteria. One of the basic distinctions concerning the termination of ownership title is the difference between:

– absolute termination; and

– relative termination.

Absolute termination occurs when ownership title to a thing terminates without anybody else acquiring it. This group of ownership title termination includes, above all, the cessation of existence of a thing either as a result of its destruction (a demolition of a construction) or its consumption. Relative termination includes situations when ownership title terminates for the former owner with someone else acquiring the right at the same time. In such situations, the legal reasons for the termination of ownership title correspond to the legal reasons for the acquisition of ownership title. Thus, for example, the ownership title of the original owner (donor) is terminated on the basis of a contract of donation (a purchase contract, a contract of exchange). At the same time, the ownership title to the same thing is acquired by the donee (the buyer, or the other party to the exchange, as the case may be).

The Civil Code does not contain any express regulation of individual kinds of termination of ownership title. In spite of that, the following specific kinds can be listed:

a) Termination on the Basis of a Manifestation of the Will of the Existing Owner

aa) By contract – the individual forms of termination of ownership title correspond to the forms of acquisition of ownership title on the basis of contract (see above). The contracts can have various forms – purchase agreements, contracts of donation, agreements on the transfer of a co-owned share, agreements on the termination and settlement of common property, agreements on the surrender of a thing (in restitution matters), etc.

ab) By dereliction of a thing – this is a unilateral manifestation of the existing owner's will, whereby he expresses his will not to continue as the owner of a thing. Dereliction needs to be distinguished from a loss, which constitutes an event. The consequences of dereliction are regulated by Section 135 of the Civil Code, under which dereliction brings about the termination of the owner's ownership title to the derelict thing (regardless of whether the owner of the derelict thing is known or not), and, the same time, ownership title is created for a municipality. The application of dereliction in the case of real estate is highly problematic and contestable.

ac) By destruction of a thing – this is a legal act by the owner, whereby ownership title is terminated because the owner causes the material substrate of a thing to be unusable as a result of his action (in the case of real estate, the destruction of a thing is constituted by its demolition).

ad) By consumption – i.e. by exhausting the use value, regardless of whether the owner benefits from it or not. This is practically impossible in the case of real estate.

b) Termination Independent of the Will of the Existing Owner

Within this category, two subtypes can be distinguished – termination of ownership independent of the will of the owner in the narrow sense, and termination of ownership against the owner's will.

ba) By cessation of existence of a thing – Although the result is the same as in the case of the destruction of a thing by its owner (i.e. the cessation of existence of the material substrate of a thing), this concerns the cessation of existence of a thing as a result of an event (fire, earthquake).

bb) By loss of a thing – Unlike real estate, which cannot be lost, the loss of movable things results in the termination of ownership title if the thing is not returned to its owner or if the owner fails to claim it within the set period of one year. Upon the expiration of this time limit, the ownership of the thing passes to the state.

bc) By death of the owner – this terminates the owner's ownership title, which passes to his successors or passes to the state as escheat (if no heir succeeds to the inheritance).

bd) By prescription – this terminates ownership title when certain conditions for its acquisition by a lawful holder are met (there may not be two different subjects holding ownership title to a thing, unless this concerns common property).

be) By decision of a state body (by a judicial decision on the termination and settlement of common property; by a decision of an administrative body on expropriation – cf. the relevant chapters; by a judicial decision in a criminal matter where the court imposes the final and conclusive punishment of forfeiture of property or forfeiture of a thing or a protective measure (injunction) of a confiscation of a thing; during the sale of things in the process of enforcement of a decision – execution; by a judicial decision on an unauthorized construction with the court assigning the construction to the owner; by a judicial decision on ownership to a processed thing).

Protection of Ownership Title

Ownership title is protected by a whole range of legal instruments. The fundamental legal protection always consists of the legal instrument of the highest

legal power – the Charter of Fundamental Rights and Freedoms. In addition, protection is provided by almost all branches of law (both public and private). General instruments can be used for the protection of ownership title, i.e. such that the legal order affords for the protection of all subjective rights (e.g. the possibility to seek compensation for damage to a thing, the possibility of seeking protection with the relevant municipal office if an obvious breach of peaceful state occurs – cf. Section 5 of the Civil Code). Special instruments are those that are meant exclusively for the protection of ownership title, including so-called possessive actions ("vlastnické žaloby") provided for in Section 126 of the Civil Code. These actions can have two forms:

a) Action for the Recovery of a Thing (Real Action) ("Žaloba na vydání věci (žaloba reivindikační)")

This action is meant for the protection of ownership title in case of an unauthorized retention of a thing. An action for recovery seeks the release of both movable and immovable things. In the event of immovables, the expression 'action to evict a thing' is used ("žaloba na vyklizení věci"), which arises from the nature of the thing and is also emphasized in other legal regulations, e.g. in Section 340 of the Civil Court Procedure as well as in judicial practice.

b) Action to Repel a Claim (Actio Negatoria) ("Žaloba zápůrčí (negatorní)")

This action may be used for the protection of ownership title in all other cases where ownership title is infringed in some other way than an unlawful retention of a thing.

Common Property ("Spoluvlastnictví")

A thing which is subject to the right of ownership may be owned by a single entity or belong to several entities at the same time, without being separated among them. The latter case describes a situation of common property (co-ownership) where all co-owners are considered as a single owner of a common thing; the same rights that belong to an owner in the case of individual ownership are held by several individuals in the case of common property.

As regards the delimitation of shares, common property is divided into two kinds:

- 'apportioned' common property ("podílové"),
- 'unapportioned' (joint) common property ("bezpodílové").

These categories were distinguished on the basis of the Civil Code, but from 1 August 1998, the Civil Code provides only for the former since the latter was replaced by the institute of matrimonial property of spouses ("společné jmění manželů", cf. Section 136 and subsequent sections).

As regards their nature, the individual types of 'apportioned' common property are distinguished into:

– ideal common property,

– real common property.

In the case of ideal common property, there are no actual parts of the common thing specified for the individual co-owners; the co-owners merely have certain rights and obligations (cf. 'apportioned' common property). By contrast, in the case of real common property, co-owners have rights to precisely delimited parts of an inseparable thing (similar to real common property is the ownership of apartments and non-residential premises, which is a combination of real common ownership to a certain part of a construction, i.e. an apartment, non-residential premises and 'apportioned' common ownership of shared parts of the construction).

'Apportioned' Common Property ("Podílové spoluvlastnictví")

The defining feature of 'apportioned' common property is a share (an ownership interest) representing the degree to which co-owners participate in the rights and obligations ensuing from their co-ownership of a common thing (Section 137(1) of the Civil Code). The share does not delimit a certain part of a thing with respect of which a co-owner is authorized to exercise his ownership title; it expresses the legal position of a co-owner towards the other co-owners, determining how the individual co-owners participate in the proceeds of a thing, what expenses they bear, etc. The co-ownership share plays an important role in the final stage of the co-ownership relation: during its termination and settlement.

The size of one's share may be expressed as a fraction or percentage. Its specific amount depends, above all, on the agreement of co-owners, legal regulations (cf. Section 150(4) of the Civil Code) or a decision by a relevant body (e.g. a court ruling on the settlement of matrimonial property of spouses). If the size of one's share is not specified, then it holds that the shares are equal (Section 137(2) of the Civil Code). The share in common property may be subject to inheritance, execution of a decision, right of lien in the case of a share in both movables and immovables, etc.

'Apportioned' common property comes into existence in the same manner as ownership title (see above).

The content of 'apportioned' common property covers those rights and duties that are subject of individual ownership on the one hand, and, on the other, those rights and duties that are specific for the relation of co-ownership. These specific rights and duties have been traditionally classified into three groups according to what subjects they pertain to:

- the mutual relationship between co-owners,
- the relationship of all co-owners towards third persons concerning the common thing,
- the relationship between one co-owner towards other co-owners concerning his co-ownership share.

What is decisive in the mutual relationship between co-owners are the sizes of shares of individual co-owners, which determine the degree to which the co-owners participate in the rights and obligations ensuing from their common property. It is logical that when using and disposing of the thing, the co-owners will depend in their mutual relationship mostly on their mutual agreement. The Civil Code, however, does not require unanimous consensus, favoring the majority principle (Section 139(2) of the Civil Code). This means that not all co-owners need to arrive at an agreement in matters concerning the management of the common thing; what matters is the decisive majority calculated according to their shares. It follows from this that the actual number of co-owners and their numerical majority are not relevant; what matters is the majority of shares. At the same time, the Civil Code deals with the situation of those who are defeated in the vote as follows: if the decision concerns a major change of a common thing (e.g. reconstruction, change in the purpose of a plot of land), the outvoted co-owners may file a petition with a court seeking a ruling on such a change (Section 139(3) of the Civil Code). The Civil Code further deals with those situations where it is impossible to reach a majority, e.g. because some of the co-owners refuse to participate in decision-making or a balance of votes is reached. In such cases, matters of management with the common thing will be decided on by the court upon the motion of any of the co-owners. It must be stressed that management of the common thing does not include such dispositions that might lead to the termination of the co-ownership relation. Consequently, a transfer of a common thing cannot be decided on by a majority calculated according to the size of the shares but requires the agreement of all co-owners.

In their mutual relations towards third parties, all co-owners are considered together as a single entity. Therefore all co-owners have rights and obligations jointly and severally from legal acts concerning the common thing. Their mutual

relation is one of active or passive solidarity provided for by the law (Section 139(1) of the Civil Code).

The relationship between a single co-owner and others concerning their shares in common property is most clearly manifested during a transfer of a share in common property. Since the change of a co-owner is undoubtedly a significant change, the legal order provides a guarantee for the legal certainty of other co-owners. At present, the institute of a pre-emptive right of purchase is applied (for details, see a special chapter). During the transfer of a share in common property, two situations may arise depending on who is to acquire the share in common property:

– if the co-owner is transferring the share to his next of kin, i.e. persons related to him in the direct line, siblings, spouse or other persons in a familial or some similar relationship and if the harm that one of them would suffer might be reasonably felt as his own harm, then the co-owner may transfer his share to such persons without any further limiting conditions;

– if the co-owner is transferring a share in common property to some other persons (natural and all legal persons), then the pre-emptive right of purchase to such a share arises to the other co-owners. This pre-emptive right of purchase arises as a consequence of the co-owner's intention to transfer his share. The content of the pre-emptive right needs to be judged according to the provisions in Section 602 and subsequent sections of the Civil Code. The exercise of the pre-emptive right of purchase will be unequivocal if the authorized co-owner is a single person. In other cases, an agreement is assumed to exist among the other co-owners, especially concerning which of them will exercise the pre-emptive right of purchase. If no agreement is arrived at, then co-owners have the right to buy the share according to the sizes of their own shares. A violation of the pre-emptive right during the transfer of a share in common property gives rise, in addition to the usual consequences of the violation of the pre-emptive right (cf. Section 603 of the Civil Code), to other consequences as well: any agreement under which a co-owner transfers his share to another person without respecting the legal pre-emptive right of the other co-owners is voidable (Section 40a of the Civil Code – the party affected by such an act must raise a defense based on the invalidity of the act, otherwise the legal act is considered as valid).

Common property may cease to exist similarly to the cessation of existence of individual ownership (e.g. all co-owners transfer the common thing to the ownership of a single owner). However, the nature of the co-ownership relation also gives rise to the possibility of its cancellation. Common property may be terminated:

– by agreement (Section 141 of the Civil Code),

– by a judicial decision upon the motion filed by any of the co-owners (Section 142 of the Civil Code).

The termination of common property is the first step. This needs to be followed by its settlement as the second step.

Out of the above-mentioned ways of terminating common property, the Civil Code prefers termination by agreement which makes it possible to deal with the situation on the basis of a common will of the co-owners. Where common property concerns real estate, the agreement must be in writing and must be followed by an entry of the ownership title into the real estate registry.

If common property is not terminated and settled by agreement, then termination and settlement will be performed by the court upon a motion filed by one of the co-owners (Section 142(1) of the Civil Code).

Matrimonial Property of Spouses ("Společné jmění manželů", hereinafter abbreviated to MPS)

In its original wording (the Act No. 40/1964 Sb.), the Civil Code used to regulate only apportioned common property and 'unapportioned' (joint) common property' that could arise only between husband and wife and which could, with view to the overall conception and nature of ownership title, affect only things (cf. also the systematic placement of the regulation within the second part on rights in rem). The original text of the Civil Code thus did not include an overarching institute for the property rights of spouses, which was rectified by legislators by the adoption of the amendment No. 91/1998 Sb. By means of mandatory norms, this act removed the modified institute of unapportioned common property with a very limited scope, and replaced it with the institute of matrimonial property of spouses, whose scope is much broader, allowing a significant contractual freedom to both spouses and fiancés.

The purpose of the institute of matrimonial property of spouses is to limit individualism in favor of matrimonial and familial solidarity. This is apparent from many individual provisions (cf., for instance, the rebuttable presumption of existence of matrimonial property in Section 144 of the Civil Code; the rules for the settlement of terminated matrimonial property in Section 149 (2) and (3) of the Civil Code; the legal presumption for the settlement of matrimonial property in Section 150 of the Civil Code; and the institute of things forming customary furnishment of their common household in Sections 143(a) and 148 of the Civil Code).

Matrimonial property of spouses may be conceptually created ex lege *only between spouses*, regardless of whether they actually live together or not. It is also

created in such a marriage that is subsequently declared by a court to be void, e.g. due to bigamy. It does not arise in a putative marriage because this does not cause any effects to status or property. Matrimonial property of spouses does not arise in the case of registered partnership, although the legal system of the Czech Republic provides for this form of cohabitation of persons of the same sex (cf. the Act No. 115/2006 Sb. on Registered Partnership). Matrimonial property of spouses does not arise between male and female cohabitees, although their cohabitation may be very stable. Neither registered partners nor any other partners – regardless of their sex – may establish any kind of a property union for the event of the continuation, cancellation or termination of their cohabitation, including their deaths.

As regards the *subject matter* of matrimonial property of spouses, the property includes all assets and liabilities acquired except for certain statutory exceptions. The law provides that the subject matter of MPS includes, ex lege, the following:

a) assets: property acquired by any of the spouses or both of them together during their marriage (anything that may be assessed in terms of money, including, for instance, a business share), with the exception of:
   - property acquired by inheritance
   - property acquired by donation
   - property acquired by one of the spouses in exchange for property in the exclusive ownership of that spouse (the theory of transformation)
   - property which by its nature serves the personal needs of one of the spouses (excluding, however, things serving for the performance of one's vocation)
   - property which on the basis of restitution legislation was restituted to one of the spouses after 1989 (cf., e.g. the Acts Nos. 403/1990 Sb., 87/1991 Sb., and 229/1991 Sb.),

b) liabilities incurred by one or both spouses during their marriage, with the exception of:
   - liabilities related to property in the exclusive ownership of only one of the spouses and
   - liabilities taken over by one of the spouses without the approval of the other where their extent exceeds a level commensurate to the property of the spouses.

Since MPS may, with view to its very wide definition, include a business share, Section 143 (2) of the Civil Code provides that where one of the spouses becomes a partner of a business company, a shareholder or a member of a co-operative the

other spouse does not become a partner, a shareholder or a member of the co-operative (except in the case of membership in a housing co-operative). As stated in the introduction, Section 144 of the Civil Code provides, in case there is any doubt about the scope of the subject matter of MPS, a statutory presumption for the benefit of matrimonial property. This is a rebuttable presumption which may be disproved by evidence.

The 1998 amendment of the Civil Code loosened the rigidity of matrimonial property law mainly by allowing the conclusion of a relatively *wide range of agreements (covenants)*, whereby spouses or fiancés may *modify the statutory extent of MPS* – they may agree on the extension or restriction of their matrimonial property, modify the statutory manner of its *management*, or, as the case may be, modify the *creation* of MPS as an institute by deferring it to the day of termination of marriage (*deferred community, Zugewinngemeinschaft, comunione differita, coaquisita coniugum*). Things forming customary furnishing of a common household of spouses constitute a statutory *limitation* of the freedom of contract. Where the scope of MPS is being restricted, such things must always constitute the subject matter of MPS. The form is mandatorily set by the law to be a notarial deed.

The effects of a contractual regulation of the subject matter of MPS towards third parties are, however, significantly limited because they apply against a third party only if this third party is aware of the contents of the agreement (cf. Section 143(a), subsection 4 of the Civil Code). Where the modification agreement concerns real estate, the effects arise upon its entry into the real estate registry.

The 1998 amendment, however, *did not allow for the possibility of signing pre-marital* or marital (familial) agreements in the traditional sense of the word, as it was possible in Bohemia under ABGB. Neither spouses nor fiancés may thus contractually form some other type of a property arrangement different from MPS and cannot terminate it as such upon mutual agreement either. They cannot legally include – within the so-called 'modification agreement' – any common provisions for the event of death, etc.

A specific kind of a change in the subject matter of MPS, leading to a modification of its statutory extent, comes as a result of *a judicial decision*, under which MPS is restricted down to things forming customary furnishings of a common household. The restriction is decided on by a court upon the petition of one of the spouses by issuing a judgment. This situation may occur under the following two conditions:

– on account of serious reasons (e.g. alcoholism, cf. Section 148(1) of the Civil Code),

– if at least one of the spouses obtains authorization to carry on business activity or becomes a partner in a business entity with unlimited liability. (cf. Section 148(2) of the Civil Code).

The contents of MPS consist of rights and obligations of spouses. Each of the spouses has the same rights and obligations as any other co-owner, co-debtor or co-creditor and his or her rights are exercised together with the other spouse. It is desirable, in order to determine the specific content, to distinguish rights and obligations common to all categories of MPS on the one hand, and rights and obligations different for each category of MPS on the other. The law provides expressly that both spouses are entitled and liable *jointly and severally* from acts in law relating to their matrimonial property (Section 145(4) of the Civil Code). This means that if one of the spouses concludes a purchase agreement, the duty to pay the purchase price arises to both spouses, both also have the right to acquire the thing into their ownership once matrimonial property of spouses is created with respect to the purchased thing as a result of the required procedure (e.g. in the case of immovables recorded in the real estate registry upon the entry of such a real estate into the registry – even though this may be for the benefit of one of the spouses only).

Both spouses use and maintain jointly property forming their matrimonial property.

The routine *management* of property being part of matrimonial property may be carried out by either of them. In other matters, the consent of both spouses is required, otherwise the relevant act in law is voidable. The Civil Code does not specify the form of such a consent; as a result, the consent may be implied, i.e. carried out in such a way that one may adduce, from the behaviour of the spouse, that he or she had agreed with dealing with some matter in a certain way. The consent may be subsequent. As stated above, this provision of the law may be modified by agreement.

The law provides special rules for *business activities*. Property included in matrimonial property may be used by one of the spouses for his or her business activity with the other spouse's consent. This consent is to be granted when such property is to be used for the first time. There is no specific form prescribed for this consent and it may be implied. This is a general consent; the other spouse's consent is not subsequently required for other individual acts in law related to the business activity.

The existence of matrimonial property of spouses is possible only for the duration of marriage. That is why MPS *terminates* no later than the termination of marriage (Section 149(1) of the Civil Code), i.e. upon the death of one of the

spouses, his or her declaration as dead, divorce and the declaration of the marriage as null and void.

Exceptions are provided for by special laws, under which MPS terminates during the term of the marriage (cf. the punishment of the forfeiture of one's property according to Section 52(2) of the Act No. 140/1961 Sb. – the Criminal Code, and the declaration of bankruptcy according to the Act No. 182/2006 Sb. on Bankruptcy and Forms of its Settlement).

MPS may, after its termination or judicial restriction, be renewed only by a court decision issued upon the petition of one of the spouses (Section 151 of the Civil Code). No renewal as a result of a mutual agreement is possible.

All cases of termination of MPS or its contractual or judicial restriction must be followed by the *settlement* of matrimonial property. Settlement is understood to be such an arrangement of property relations between the spouses concerning property included in matrimonial property at the time of its termination or cancellation. The Family Act (No. 94/1963 Sb.), as amended by the amendment No. 91/1998 Sb., provides for the possibility, in case of so called uncontested divorces, of a settlement, with a deferring condition, of matrimonial property of spouses that is to terminate in the future as a result of a divorce (cf. Section 24(a) of the Family Act). This new regulation allows spouses to settle all their property relations arising from their marriage in their entirety (i.e. not only MPS but also apportioned common property, common housing and, as the case may be, the maintenance duty for the divorced spouse).

In the case of settlement of MPS, the law prefers the spouses' or the divorced spouses' *agreement*. If the property involves an immovable thing, the legal effects arise upon its entry into the real estate registry.

If there is no agreement, however, any of the divorced spouses may file a suit for the settlement of MPS with the relevant court. The legal rules are both *quantitative and qualitative*. The basic principle is that the ownership interests of both spouses whose the matrimonial property has terminated are equal. Either spouse is entitled to claim reimbursement for whatever he/she has spent on the matrimonial property from his/her own funds, and must pay compensation for whatever he/she has taken from the matrimonial property for the benefit of his/her other property (cf. Section 149(2) of the Civil Code). During settlement, the needs of minor children shall be particularly taken into consideration, as well as the quality of care contributed by each spouse to the family, and the efforts that each spouse put into the acquisition and maintenance of matrimonial property (cf. Section 149(3) of the Civil Code).

Where within three years of termination of matrimonial property, no agreement on settlement has been reached, or where within three years of the said termination no petition is filed with the court seeking settlement of matrimonial property by

a court ruling, then the so-called *irrebuttable presumption* shall be applied. Due to the need to guarantee legal certainty for spouses as well as third parties, the law provides the following rules:

c) movable things, originally included in MPS, come ex lege into the individual ownership of that former spouse who uses such a thing for his/her need, the need of his/her family and household exclusively as the owner

d) other movable and immovable things, originally included in the matrimonial property of spouses, come ex lege into apportioned co-ownership, the shares (ownership interests) of each co-owner being equal (i.e. one half each with respect of the total of each individual thing),

e) the same shall apply to other joint property rights, claims and liabilities – they become ex lege apportioned in the same way (i.e. one half each with respect of each individual claim or liability).

The special rules are provided by special acts concerning the settlement of MPS as a result of the death of one of the spouses, declaration of bankruptcy, and the punishment of the forfeiture of one's property.

Easements – Rights to Another Person's Things

Rights to another person's thing constitute a group of subjective rights which enable the use of a thing of another person in a specified manner. The characteristic feature of these rights is their nature as rights in rem, which represents the link between their contents (rights and obligations arising from them) and a certain subjective right to things (traditionally and most frequently the ownership title).

Rights to another person's things constitute, in the objective sense, a set of several legal institutes performing independent functions. Easements enable the use of the utility value of a thing in the ownership of some other entity, while right of lien ("právo zástavní (podzástavní)") and right of retention (possessory lien, "právo zadržovací") are instruments for establishing security.

Easements

The institute of easements was created on the basis of servitude and burdens pertaining to things under the Civil Code No. 141/1950 Sb. This is a set of legal norms regulating relations which come into existence during the partial restriction of the possible use of the utility value of another person's things in favor of individualized subjects in order to achieve a more effective social and economic use of a thing. The current legal regulation of easements is contained mainly in the Civil Code (Section

151(n) and subsequent sections), as well as in some other regulations governing specific aspects of individual easements (mainly their creation and contents, e.g. in the case of so-called 'line buildings'). The legal delimitation of the notion of 'easements' is linked to all these characteristics: under Section 151(n), subsection 1 of the Civil Code, easements restrict the owners of real estate in favor of another person in such a way that the owner is obliged to tolerate something, refrain from doing something or perform something. The rights arising from an easement are either attached to ownership of a specific immovable asset (real estate), or pertain to a particular person. Further legal characterization is contained in Section 151(n), subsection 2, which provides that easements pass together with ownership title to the transferee.

Types

The legal delimitation of the notion of 'easements' indicates their basic division. One of the possible divisions is according to the determination of the entity authorized:

- easements effective in rem (the authorized entity is always an entity with an ownership title to a thing. A change of this entity is not legally relevant for the further existence of the easement and any successor to the original owner obtains the right corresponding to the easement.)
- easements effective in personam (these easements satisfy the interests of an individual subject, while easements in rem satisfy interests held by any holder of a subjective right to a thing because they are related to the objective possibility of implementing its utility value.)
- Another division of easements results from their different content, with an emphasis on differences in the duties of the obliged person. According to this differentiating criterion, easements may be divided into:
- easements with the duty to perform (e.g. to provide certain acts)
- easements with the duty to suffer (e.g. to suffer the behavior of another person)
- easements with the duty to refrain (e.g. to refrain from performing the usual content of ownership title).

Creation

In the formation of individual easements, what needs to be considered is their original creation only rather than acquisition in situations where an easement had

existed before and where merely a change in some of its subjects has occurred. Within the sense of Section 151(o), subsection 1 of the Civil Code, the following ways can be distinguished for the original formation of easements:

- on the basis of a written contract,
- on the basis of a last will (testament) in connection with the results of inheritance proceedings,
- on the basis of an approved agreement of heirs,
- a ruling of the competent administrative authority,
- by operation of law,
- by the exercise of one's right (acquisitive prescription).

The conclusion of the agreement – which must be in writing – is regulated by the general provisions of the Civil Code on legal acts. The agreement may be signed by the owner of real estate or some other person vested with this right by the law. The agreement on the establishment of easement may be independent or it may exist as a collateral provision in, e.g. a contract of donation, a purchase agreement, etc. The acquisition of the right corresponding to an easement is conditioned by its entry into the real estate registry.

An easement arises on the basis of a last will upon the death of the testator. The testator's authorization to establish an easement on the basis of a last will comes as the result of the exercise of his/her ownership title.

The establishment of an easement under (c) above depends on the agreement of heirs on the settlement of inheritance, concluded by heirs during inheritance proceedings. An agreement that does not conflict with the law or good morals will be approved by the court.

Where a legal regulation enables the establishment of an easement on the basis of a ruling of a competent administrative authority, the easement arises upon the legal effect of such a ruling. An easement may be established, above all, by a decision on the expropriation, a decision of a land office (under Section 9 of the Act No. 229/1991 Sb. on Land) and a court ruling (e.g. as the result of a termination and settlement of divided community property – cf. Section 142; when deciding on the regime of an unauthorized construction – cf. Section 135c; and the easement of the 'right of access' – cf. Section 151(o), subsection 3).

An easement is established directly on the basis of facts stated in legal regulations. Such regulations typically regulate certain limitations of ownership or some other similar right with its contents corresponding to easements (e.g. in the case of some

line buildings under the Act No. 79/1957 Sb., and regulations establishing the right to place a building in a plot of land – cf. Section 21(5) of the Act No. 72/1994 Sb.).

The Civil Code likewise allows for the acquisition of a right corresponding to easements by the exercise of right with a reference to Section 134 of the Civil Code (i.e. the conditions for acquisitive prescription of the ownership title). It follows from this that the beneficiary of the right corresponding to easements will become any person exercising the right for himself and in the good faith, with view to all the circumstances, that such person has such a right. The right is established upon an uninterrupted exercise in the length of ten years.

Contents

The subjective duties follow the delimitation of the concept, i.e. they concern the extent of one's obligation, imposed by law, to perform, suffer or refrain from something. Subjective rights enable the person benefiting from the easement (the beneficiary) to demand the specified behavior of the obliged entity and, in the case of positive easements, also act in a certain manner. The specific content of an easement is determined by legal facts constituting the legal reasons for its creation.

The content of easements also includes the obligation to bear reasonable costs for the subject matter of an easement (cf. Section 151(a), subsection 3). Unless provided otherwise by the agreement of participants, the reasonable costs for the maintenance and repair of a thing must be borne by the person (the beneficiary) who benefits from the right corresponding to easements and enabling him to use a thing of another person. Where such a thing is also used by its owner, the costs are shared according to the extent to which they use it.

Termination

It follows from Section 151(p) of the Civil Code that easements terminate by operation of law, by a relevant decision ruling by the competent administrative authority, or by a written agreement. The law also specifies some types of termination. Certain facts that generally cause the termination of legal relations may be applied as well.

Easements terminate by operation of law where there are facts specified directly in the legal norm. This includes, among other, the situation specified in Section 151(p), subsection 2 of the Civil Code, where an easement automatically terminates if such permanent changes occur which prevent the real property from any longer serving the needs of the person benefiting from the easement (the beneficiary) or

from allowing more advantageous use of the real property. However, an easement does not terminate if it is only temporarily impossible to exercise it.

Easements may terminate as a result of a constitutive decision by a competent administrative authority. If, due to a change in the circumstances, a gross disparity arises between an easement and the benefit accruing to the beneficiary (the entitled person), the court may decide to terminate such easement (cf. Section 151(p), subsection 3 of the Civil Code).

The Civil Code also makes it possible to conclude an agreement on the termination or cancellation of an easement. Such agreement must be in writing and may be considered as a specific kind of dissolution (cf. Section 574(1) of the Civil Code). The right corresponding to an easement is terminated upon its entry into the real estate registry.

Section 151(p), subsection 4 provides that if a right corresponding to an easement belongs to a particular individual (i.e. it is effective in personam), it shall terminate no later than upon the death of the individual or dissolution of the legal entity.

It follows from the nature of easements that they terminate by confusion (i.e. the merging of the entitlement and obligation in a single person); where an easement is established for a temporary period of time, it terminates upon its expiration. Similar effects arise from the performance of a condition subsequent where the effect of the easement is bound to such a condition.

The Civil Code expressly provides for the statutory bar of the right corresponding to an easement. This occurs where the right is not exercised for the period of ten years (under Section 109). The statutory bar, however, does not lead to the termination of such easement; the entitlement merely becomes conditional.

Lien ("zástavní právo")

The right of lien performs its role mainly by forcing, from the moment of its inception until its realization, the debtor to fulfill his/her obligation (i.e. it performs a securing function) and, in the event of any failure to meet such obligation, it allows for the satisfaction of an unpaid claim straight from the proceeds of realization of the thing encumbered by lien (i.e. it performs a payment function) – cf. Section 152 and subsequent sections of the Civil Code. The right of lien relates also to appurtenances, accretions and inseparable fruits of the thing which is encumbered by lien.

The legal relationship of lien has an accessory character with respect to the encumbered principal obligation; the right of lien is existentially related to the principal obligation because it exists only where there exists or will exist a principal

obligation. The termination of the principal obligation likewise terminates the right of lien. This accessory nature is also reflected in the delimitation of subjects. That is why we may distinguish between subjects of a contractual legal relationship, which is being secured by the right of lien, and the legal relationship of lien itself. The subjects are:

- creditor (lien creditor),
- obligation debtor (i.e. the debtor in the main contractual relationship),
- lienee (i.e. the owner of the pledge).

The obligation debtor and the lienee may be one and the same person (mainly where the obligation debtor establishes the right of lien to things in his/her ownership). Another subject may be the pledgor (mortgagor), i.e. the person who establishes the right of lien (during the first phase, this person is simultaneously the lienee).

The subject matter of lien may be all things that may become subject to property relationships under civil law, have property value and are convertible into money. A thing being subject to a lien may be movable or immovable (including a flat or non-residential premises delimited according to the Act No. 72/1994 Sb.), an enterprise or another collective thing, or a set of things, a receivable or another property right if its nature so admits, a business share, securities or a certain industrial property right. If there are several things being subject to a lien, this is called simultaneous lien ("vespolné (simultánní) zástavní právo").

A characteristic feature of lien is its nature as a right in rem. The Civil Code expresses this in Section 164 by providing that the right of lien is effective against any subsequent owner of any encumbered thing, a set of things, a flat or non-residential premises owned, unless provided otherwise by the law (an exception may occur, for instance, in the event of a sale of the pledge during an execution, or its realization in bankruptcy proceedings). The same applies to any subsequent creditor of a receivable subject to a lien, any subsequent beneficiary of some other property right or industrial property right encumbered by a lien and any subsequent owner of a business share or securities subject to a lien.

Establishment

The right of lien distinguishes between the title under which the lien is established, and the manner in which it is established. The Civil Code provides for several ways in which a lien can be established. Lien can arise on the basis of:

- a written contract,
- a court ruling approving an agreement on the settlement of inheritance,

– some other judicial decision,

– a decision by an administrative authority,

– by operation of law (ex lege).

The essential elements of a contract of lien include the designation of the thing encumbered by such lien and the receivable which is thereby secured. A contract of lien must be signed in writing. Where the right of lien is established upon the entry into the Lien Register, it must be in the form of a notarial deed. A contract of lien may not (under the sanction of it being declared null and void) include certain provisions (cf. Section 169 of the Civil Code). They may not be included in independent agreements or inheritance agreements. The manner of establishment of the right of lien on the basis of a contract differs according to whether the thing subject to lien is movable or immovable or if it is a set of things or a collective thing. The right of lien to real estate registered in the real estate registry is established exclusively upon the entry of the lien. A lien to movable things is established upon the occurrence of one of the following three facts:

– the handing over of a thing to the lien creditor,

– the placing of such a thing into a third party's custody or storage,

– the entry into the Lien Register kept by the Chamber of Notaries of the Czech Republic.

A lien on real estate which is not subject to record-keeping in the real estate registry, as well as to a collective thing and a set of things, may be established solely on entry into the Lien Register. The lien to a receivable is established already upon the signing of a contract (unless the legal effect is agreed otherwise). This lien has a specific nature because the pledge is a receivable that the debtor (in the legal relationship of lien) has – as the creditor – against the debtor from the encumbered receivable (i.e. a subdebtor). A lien on a receivable is effective against the subdebtor of such encumbered receivable as of the date when he receives written notification of this lien from the lien debtor, or when the lien creditor proves to the subdebtor that such lien was established. Where an encumbered receivable is itself encumbered by a lien, a sub-lien (submortgage) right is established.

A concluded inheritance agreement constitutes the title, while the right of lien arises only upon the court ruling whereby the inheritance agreement is approved. Such agreement may be concluded only by heirs, while the pledge may only be property values constituting the subject matter of the inheritance.

The court may, on the basis of its ruling, establish the so-called judicial lien ("soudcovské zástavní právo") (cf. Section 338(b) and subsequent sections of the Rules of Civil Court Procedure), which is considered as the manner of execution

of a ruling. The establishment of the judicial lien, however, does not result in the satisfaction of a claim; the claim is merely being secured. What is decisive for the order of the judicial lien is the date on which the court receives a petition for the establishment of such judicial lien.

A classic example of such establishment of lien by an administrative authority is the procedure of financial offices under Section 72 of the Act No. 337/1992 Sb. on the Administration of Taxes and Fees. Such lien is used to secure a tax claim. Customs offices may act in an analogous manner.

In many cases, the law directly specifies facts under which the right of lien is established. This is the case, for instance, with Section 672 of the Civil Code, under which a lien arises to the lessor (landlord) to movable things of the lessee (tenant) or persons who share his/her household (with the exception of things excluded from the execution of judgment) and which are located in the leased thing. This right of lien is used to secure a claim on rent payments. Similar cases are regulated, for instance, by the Commercial Code (Sections 535, 605, 628, and 707).

Contents

The rights and duties of parties involved in the legal relationship of lien have various contents in the individual stages of the development of the lien, mainly prior to the due date of the secured claim and after its due date.

In the first stage, the right of lien performs a preventive securing function. If the lien creditor has been handed over a pledge, he is entitled to hold it for the entire duration of the period to which such lien applies. He is obliged to take a proper care of the pledge, in particular to protect it from damage, loss and destruction. The lien creditor is entitled to require the lien debtor to reimburse him for any expenses which he effectively incurred when taking care of the pledged thing. The lien creditor may use the thing delivered in pledge and acquire its accretions, fruits and benefits only with the pledgor's consent. If during the period of time when the lien creditor holds a pledged thing, the thing is lost, destroyed or damaged, the lien creditor shall be liable for this damage. The lien debtor must refrain from any act which impairs a thing delivered in pledge to the detriment of the lien creditor. Where the price (value) of a thing delivered in pledge (subject to a lien) is reduced to such an extent that a receivable is insufficiently secured, the lien creditor is entitled to ask the debtor to replenish the securement to the necessary extent without undue delay. If the latter fails to do so, the part of the receivable which is not secured will become immediately due.

The second stage is characterized by the payment function of the right of lien, arising as the consequence of the maturity of a receivable and the debtor's delay with its payment. In such a case, the lien creditor is entitled to satisfy his receivable from the proceeds of realization (liquidation) of the thing being subject to a lien. At present, there are two possible ways in which satisfaction may be obtained from the thing being subject to a lien:

– realization by a public auction (cf. Section 36 and subsequent sections of the Act No. 26/2000 Sb. on Public Auctions); this is the so-called "involuntary auction" carried out upon the request of the auctioning creditor,

– realization by a judicial sale (cf. Section 200(y) and subsequent sections of the Rules of Civil Court Procedure).

Certain kinds of pledges may be governed by special regulations (e.g. the sale of securities of a business share).

The legal relationship of obligation is determining also for the right of lien. That is why the lien creditor has the option of choosing whether to seek performance against the debtor from the obligation or to seek satisfaction from the pledge. The selection will, in some cases, be limited, especially where the value of the pledge is not sufficient to satisfy his claim.

Extinguishment

The individual kinds of termination of the right of lien may be divided into two groups:

A lien will be extinguished where the secured receivable is discharged; this kind of termination arises from the accessory nature of the right of lien. A receivable may be extinguished in various ways, most often by its performance. Since the right of lien cannot exist independently, the necessary consequence is also the extinguishment of the right of lien.

The actual extinguishment of the right of lien, regardless of the existence of the secured receivable, occurs:

– where the thing subject to a lien ceases to exist (due to destruction or consumption),

– where the lien creditor waives his lien by a unilateral written statement,

– upon the expiry of the time for which the lien was established (where the right of lien was established for a definite period of time; the same effect is achieved by meeting a condition subsequent),

– where the amount of money equal to the market price of the thing subject to lien is deposited,
– on the basis of a written agreement concluded by the lien creditor and the lien debtor,
– in cases defined by special regulations (e.g. during a court execution, realisation during bankruptcy proceedings, in some cases of acquisition of ownership title to the thing subject to a lien by the state).

Ownership of Flats

The specific regulation of ownership of flats and non-residential premises (in the Act No. 72/1994 Sb., abbreviated as "ZOVB") follows the prerequisites set by the Civil Code, which refers, in Section 125(1), to a separate act governing ownership of flats and non-residential premises. Another point of departure is contained in the provision of Section 118(2), under which flats and non-residential premises may be the objects of civil legal relationships. Both provisions are based on the fact that neither flats nor non-residential premises are, despite being delimited as material parts of buildings, factually independent and actually separable parts of buildings. Consequently, flats and non-residential premises may not, as regards their technical construction, be disposed with in the full extent as independent things (i.e. be destroyed). As a result, a certain legal fiction of flats and non-residential premises as independent things – and thus objects of the property right – was created. ZOVB uses the term "unit" as a legislative shortcut for a flat or a non-residential space as a specifically delimited part of a building.

The previous legal regulation of ownership of flats (the Act No. 52/1966 Sb. on Personal Ownership of Flats) was based on the monist theory, under which the object of ownership is the flat. The building, or its shared parts to be more precise, were not considered as the object of ownership of flats but the object of co-ownership, while the co-ownership titles were merely accessory in relation to ownership of flats. Since, however, this co-ownership was not considered as a content part of ownership title, the building or its shared parts did not constitute the object of ownership of flats due to this title either.

The present conception of ownership of flats is different. The first difference appears in the name of the act itself. The new regulation expresses a dualist theory preferring the conception of co-ownership. In this conception, the building is the main object, while the flat is an accessory object, both on the level of ownership title. The entitled entity is thus a co-owner of the building, to which the ownership of a flat accedes. At the same time, however, the ownership of a unit consists of the

connection between the ownership of a building or a non-residential space, and the divided co-ownership of shared parts of the building.

The nature of flats and non-residential premises as inseparable parts of the same real estate requires that their ownership be limited by law to a greater extent than usual and that their legal regulation expresses mainly the fact that they are physically inseparable parts of a building whose use has to respect the need to administer the building as a whole.

The ownership of units is established on the basis of various legal facts. These include, among other, those that generally lead to the establishment of ownership title. However, the special nature of ownership of flats also allows for the application of special legal facts. The establishment of ownership of flats needs to distinguish between its creation itself and its acquisition.

A typical example of establishment of ownership on the basis of original acquisition is the construction of a house. For practical reasons, the original ways of acquisition are understood to include acquisition from a previous owner of the house. For the most part, acquisition from the house owner is a secondary acquisition, but the transfer of the first flat (or a non-residential space) is, without any doubt, an original establishment. This is because previously, the owner of units was the original owner of the house, but it is only upon the transfer of the ownership title to the first unit that co-ownership of the house and ownership of the unit is established. The transfers of other units from the previous owner of the house then constitute standard transfers of ownership title, although they are not different from the transfer of the first unit.

Section 5(1) of ZOVB provides for the establishment of co-ownership of the house represented by co-ownership shares in the shared parts of the building and ownership of a unit, i.e. ownership of flats in the current legislative construction, in the following ways:

- on the basis of an entry of a declaration by the owner of the building into the real estate registry,
- by construction performed on the basis of an agreement on construction.

Acquisition of Ownership Title to a Unit from a Previous Owner of the House

The owner's declaration and the transfer of the first unit need to be understood as two successive facts where the owner's declaration on the delimitation of units within the building serves as the prerequisite for the subsequent transfer of ownership

title to such units. On the basis of the declaration, the existing owner of the house becomes the owner of each individual unit while remaining the exclusive owner of the shared parts of the house. It is only upon the transfer of ownership to the first unit that the ownership of the shared parts changes into their co-ownership.

It is the possibility of the transfer of the ownership title to a unit that is actually the main point of the whole act. The prerequisite for the transfer of the ownership title to a unit is the 'division' of the house into individual flats. Prior to such a division, the object of ownership is the whole house. After the declaration becomes effective, a plurality of objects arises. The division of a house into units occurs upon the entry into the real estate registry of the owner's declaration that the owner delimits units within the building under this act. The act specifically provides the content of such a declaration. The effects of the entry arise as of the day the motion for the entry of the declaration is filed. The second necessary legal fact is an agreement on the transfer of ownership of a unit. The content of such an agreement is similar to the declaration on the delimitation of units; the difference is, above all, that while a declaration concerns all units, an agreement concerns only the unit that is being transferred. However, the agreement need not include rules specifying how the co-owners of the house are to contribute towards expenses related to the administration, maintenance and repair of the shared parts of the house, or the house as a whole, because such rules are already included in the declaration.

Declaration of the Owner of the House

The declaration is a unilateral legal act on the part of the owner addressed to the locally relevant cadastral office. The basic effect of the declaration is that, upon its entry into the real estate registry, the declaration 'divides' the building into individual flats and non-residential premises (the declaration must always concern the whole building, not only its real or ideal part); prior to that, the entire building is the object of ownership title. Although the declaration is a prerequisite for the transfer of ownership, it is not absolutely necessary that the transfer actually follows the declaration.

The declaration may be made both by the exclusive owner of the building (both natural and legal persons), and co-owners of the building. Co-owners having the building in their apportioned common property will become, upon the entry of the declaration, co-owners of all units. Each of them will have an ideal share in a unit in the amount corresponding to their previous shares in the building, retaining an ideal share in the shared parts of the house. Co-owners having the building in their unapportioned (joint) common property (matrimonial property of spouses) will become, upon the entry of the declaration, co-owners of all units and shared parts.

The essential elements concerning the contents follow from the general requirements on the one hand and the special requirements stated in Section 4(2) of ZOVB on the other.

Agreement on Transfer

An agreement on the transfer of ownership of a unit is a legal fact that either culminates the establishment of ownership of flats as a supplement to the declaration of the owner of the house delimiting its units, or leads independently to the acquisition of ownership title to a unit from its previous owner (in the case of transfers of the second and all other units). This agreement is described by ZOVB as a new contractual type, although it needs to be realized that the agreement can have various forms depending on several circumstances:

- purchase agreement – in the event of a transfer of ownership of a unit where the consideration is a financial payment,
- exchange agreement – in the event of a transfer of ownership of a unit where the consideration is in the form of something else (e.g. an exchange of ownership title to various units, or an exchange of a unit for some other thing),
- contract of donation – in the event of a free transfer of ownership of a unit,
- agreement on the transfer of a co-ownership share to a unit (for a consideration or without a consideration),
- agreement on the termination and settlement of common property,
- agreement on the settlement of common property of spouses to a unit (this agreement has a special position because it does not result in the transfer of ownership title but only the termination of ownership title of one of the spouses, unless such an agreement does not establish undivided co-ownership),
- mixed agreements (e.g. a combination of a purchase and a donation, or a combination of an exchange and a donation)

Naturally, the type of agreement governs some of the essential elements of such an agreement. In the case of a purchase agreement, for instance, the essential elements will include the price of the unit and the agreement will typically specify the due date for such a payment and means securing the performance of the assignee's duties (e.g. the right of lien securing the transferor's receivable). The collateral provisions will most typically include the possibility to withdraw from an agreement and the pre-emptive right of purchase. A similar provision, in the case of contracts

of donation, specifies the donor's possibility to seek the cancellation of the contract under Section 630 of the Civil Code.

An agreement on the transfer of a flat will always be at least a bilateral legal act (multilaterality cannot be ruled out, especially where 'multi-exchanges' and transfers of flats and non-residential premises to several assignees are concerned). Its conclusion is regulated, among other, by general provisions on contracts, as well as on offer and acceptance (Section 43(a) and subsequent sections of the Civil Code). Thus, for instance in connection with the fulfillment of the obligation under Section 22 of ZOVB, it will be decisive for the determination of the moment on which the six-month period for acceptation begins to run, the determination of the moment of acceptance, etc.

An agreement arises when the parties reach a contractual consensus. This includes, above all, the will of the contracting parties to conclude the agreement and their will to agree on the contents of the agreement. An agreement is concluded upon the effect of the acceptance of the offer to conclude an agreement. A timely acceptance of an offer becomes effective at the moment when the declaration of assent to the contents of such offer reaches the offeror (Section 43(2), subsection 2 of the Civil Code). Silence or inaction do not, in themselves, constitute an acceptance of an offer. The same holds for the establishment of multilateral contracts, where declarations of will of more than two parties are involved and whose essential element is likewise the consent of all contracting parties.

However, in order to cover certain situations, the law provides that an agreement on the transfer of a unit constitutes a so-called 'combined legal act', which arises on the basis of declarations of will of two or more parties supplemented with some other fact (cf. Sections 22(5) and (7) of ZOVB). The required consents form a prerequisite for the conclusion, i.e. the formation of a contract. Without such consents, no agreement is established and no performance can, consequently, be sought.

Lease

The fundamental features of a lease are:

- the letting of a thing for use, which may include the taking of proceeds,
- the definiteness of a thing,
- temporariness,
- consideration (unlike, e.g. a loan).

Based on its subject matter, lease may be divided into:

– lease of a thing (general lease including movable things) – Section 663 and subsequent sections,
– lease of a flat – Section 685 and subsequent sections,
– lease of residential premises - Section 717 and subsequent sections,
– lease of non-residential premises – Act No. 116/1990 Sb. on Lease and Sublease of Non-Residential Premises, as subsequently amended,
– business lease of movable things (Section 721 and subsequent sections),
– time-sharing (Section 58 and subsequent sections).

Lease of a Flat

The object of the lease of a flat may be **only a flat**. The Civil Code does not offer any precise definition of 'a flat' and the definition for the purposes of ownership title is not applicable. Reference thus may be made only to judicial decisions (the Supreme Court, file No. 2 Cdon 1010/97). 'A flat' is neither a non-residential space nor any real estate, or its part, intended for recreation. The basic prerequisite for considering some real estate or its part as a flat is the existence of a final and conclusive occupancy permit defining such a part of real estate as a flat.

A lease contract must be in writing; otherwise it is null and void (Section 40).

The lease of a flat may be agreed for an indefinite period of time, a definite period of time or for the time during which the lessee performs work for the lessor.

The lease contract must specify:

– a description of the contracting parties,
– a description of the flat,
– the extent of its use,
– the amount of rent or the manner of its calculation, as well as other payments for services related to the use of the flat or the manner in which they are to be calculated.

The description of the flat must specify the identity of the flat without any doubt. The amount of rent is agreed by the lessor and the lessee. The amount of regulated rent may be increased unilaterally in keeping with the Act No. 107/2006 Sb.

The lessor may increase the amount of rent once a year starting from 1 January 2007 on 1 January of each subsequent calendar year until 31 December 2010. The lessor may also increase the amount of rent later, e.g. from 1 March 2007, but he

cannot do so retrospectively (e.g. increasing rent in March 2007, stating that the increase is applicable from 1 January 2007).

The lessor must deliver a written notification to the lessee on the increase of rent. This notification must include an explanation (proving that the increase occurs in harmony with the law). The duty to pay rent arises as of the day stated in the notification but no later than the first day of the calendar month following three months after the delivery of the notification to the lessee.

The lessee may seek protection against the increase of rent by filing a petition for the declaration of nullity of such rent increase.

When agreeing on the contents of the lease agreement, **the lessor may require from the lessee to deposit pecuniary means as securement for rent** and expenses for supplies and services related to using the flat and for payment of other expenses connected to lease of the flat ("security deposit"). The amount of pecuniary means required as a deposit may not exceed three times the monthly rent and advances for supplies and services provided in connection with using the flat. The lessor must keep such pecuniary means in a special bank account. The account is common for all lessees.

The lessor is entitled to use the pecuniary means for the settlement of the lessee's liabilities and the lessee is obliged to top up the pecuniary means of the deposit in the bank account to the original amount provided that the lessor has lawfully withdrawn the pecuniary means from the said account.

The lessor is obliged to hand over the flat to the lessee in a condition suitable for its proper use and to ensure that the lessee is able to exercise the rights related to using the flat in full and without disturbance.

The lessor may not perform construction work without the lessee's approval.

The lessor has the right:

– to require the lessee to remove, without any delay, any adaptations and alterations made without the lessor's consent,

– to demand a late charge if the lessee is default with the payment of rent more than five days after its due date,

– to remedy, after having first notified the lessee, any defects and repair any damage caused by the lessee (or those living with him), and demand compensation from the lessee.

The lessee and persons living with him have the right to use the flat and common spaces of the building and its facilities, as well as the right to make use of the services rendered in connection with using the flat.

The lessee is entitled to:

- demand a reduction of the rent if the lessor, despite the lessee's notification of defects in the flat or building, fails to remedy such defects which, substantially, or completely, impair its use;
- demand a reduction of rent if supplies and services related to using the flat have been rendered defectively, which deteriorated the conditions for using the flat (e.g. the water supply is turned off);
- a reduction from the payment of supplies and services connected to using the flat, if such supplies and services are not properly and timely rendered;
- where the lessor fails to fulfill his obligation to remedy defects which inhibit proper use of the flat, the lessee has the right to remedy such defects to the extent necessary, and to demand from the lessor compensation for the expenses expediently incurred provided that he has informed the lessor thereof in advance;
- withhold his consent to building adaptations that the lessor wishes to make (only on serious grounds – e.g. a serious illness, old age, etc.).

The lessee is obliged:

- to properly use the flat, common spaces and facilities of the building;
- to make proper use of services and supplies relating to use of the flat;
- to notify the lessor of a change in the number of persons living with the lessee in a flat within 15 days of such a change;
- to see to it that, in exercising his rights, a milieu is created in the building which enables the other lessees to exercise their rights;
- to inform the lessor, without undue delay, of the need for repairs the costs of which are to be borne by the lessor;
- to enable the lessor to make such repairs;
- to carry out minor repairs and routine maintenance of the flat at his own expense;
- to enable access to the flat, after prior written notification thereof, for the purpose of installing and maintaining meters measuring and regulating heating and hot and cold water;
- to enable the reading (recording) of the data shown on the meters of heating and hot and cold water, etc.

The lessee may not carry out any building adaptations without the lessor's consent.

The lease of a flat terminates:

– by agreement;

– upon expiry of a period of time;

– as a result of a destruction of the flat;

– by the merger of the lessor and the lessee;

– by a notice of termination by the lessee;

– by a notice of termination by the lessor;

– by a withdrawal from the agreement.

What deserves special attention is the termination of the lease by a notice of termination by the lessor and the lessee.

The lessee may terminate the lease by a written notice of termination without specifying any reasons for such a legal act. A notice may terminate lease for a definite period of time, lease for an indefinite period of time, as well as lease for a time agreed to perform work for the lessor. The period of notice may not be shorter than three months and must terminate at the end of a calendar month. The act of the lessee's moving out of a flat cannot be considered as a notice of termination of a lease of a flat.

The lessor may terminate the lease of a flat by a written notice of termination, which must specify the reasons for such a legal act. The lessor may give notice terminating the lease of a flat only due to reasons laid down by law. The notice of termination must be served on the lessee.

The notice of termination must include:

– termination period, which cannot be shorter than three months and must be set in such a way that the lease terminates on the last day of a calendar month;

– the reason for the termination;

– the advice that the lessee may file a lawsuit with the court within 60 days asking the court to nullify the lease termination (if the notice is given without the court's approval);

– the obligation of the lessor to provide the lessee with a housing substitute (if the lessee is entitled to such housing substitute under the law).

The lessor may terminate the lease contract **without the court's approval**:

- if the lessee or those who live with him, despite a written warning, grossly breach good morals in the house (Section 711(2)a of the Civil Code);
- if the lessee grossly breaches his obligations arising from the lease of the flat, especially by not paying the rent and charges for supplies and services related to the use of the flat, where such amounts in arrears are equal to three times his monthly payments (Section 711(2)b of the Civil Code);
- if the lessee has two or more flats, unless he cannot justly be required to use only one flat (Section 711(2)c of the Civil Code);
- if the lessee fails, without serious reasons, to use the flat or if he uses the flat, without serious reason, only occasionally (Section 711(2)d of the Civil Code);
- if it concerns a flat of special designation or a flat in a building of special designation, and the lessee is not a handicapped (disabled) person (Section 711(2)e of the Civil Code).

Where the lessee does not agree with the notice of termination (e.g. disputing the reasons for the notice), he may file an action with the locally relevant court within 60 days of the service of the notice for the court to nullify the lease termination.

The lessee is not obliged to vacate the flat if:

- a house substitute has not been arranged for him (in case he is entitled to it);
- the dispute for the determination of nullity of the notice has not been concluded by a final and conclusive judgment.

In the case of a notice of termination without the court's approval, the lessee is generally entitled only to a **shelter** (a temporary solution until the lessee arranges his own proper accommodation and a space for the warehousing of his furnishings and other personal and household items).

The lessor may terminate the lease contract **only with the court's approval** in the following cases:

- where the lessor needs the flat for himself, his spouse, children, grandchildren, son-in-law or daughter-in-law, parents or siblings (Section 711(a), subsection(1)a of the Civil Code);
- where the lessee has stopped to do the work for the lessor and the lessor needs this service flat for another lessee who will work for the lessor (Section 711(a), subsection(1)b of the Civil Code);

- where it is necessary due to a reason of public interest to dispose of the flat or building so that the flat or building cannot be used or where the flat or building requires such repairs that the flat or building cannot be used for a prolonged period of time (Section 711(a), subsection(1)c of the Civil Code);
- where it concerns a flat which is structurally connected to premises designated for operation of a shop or some other business activity and the lessee or the owner of such non-residential premises wants to use the flat (Section 711(a), subsection(1)d of the Civil Code).

In the case of a notice of termination with the court's approval, the lessee is generally entitled **to a substitute flat or, as the case may be, an essentially equivalent substitute flat**. Where a flat with a regulated rent is being vacated, a substitute flat with an unregulated rent must be considered as an essentially equivalent substitute flat as long as it otherwise meets the requirements for an essentially equivalent substitute flat (IV. ÚS 524/03).

The court may rule, with regard to reasons which merit special consideration, that the lessee is entitled to a substitute flat which has a smaller floor space than the one he is vacating. Where the lease is terminated under the provision of Section 711(a), subsection 1(b) of the Civil Code and the lessee stops to do the work for the lessor without a serious reason, it is sufficient to provide the lessee on his vacating the flat with a 'shelter'. The court may, however, rule that for reasons that merit special consideration the lessee has the right to a substitute flat of a smaller floor area, etc., or to substitute accommodation.

Streszczenie

W opracowaniu przedstawiono w zarysie czeskie uregulowania prawne dotyczące pojęcia nieruchomości. Poruszono również problematykę działek (parceli), lokali i budynków będących odrębnymi od gruntu przedmiotami stosunków prawnych niepodlegających reżimowi zasady „superficies solo cedit". Autorzy omawiając prawo własności nieruchomości charakteryzują sposoby nabycia, zbycia (w tym - utraty) i ochrony tego prawa; poruszają również zagadnienie obciążania nieruchomości ograniczonymi prawami rzeczowymi. Osobne miejsce poświęcono tematyce współwłasności nieruchomości.