

# **Pre-emption right to immovable property**

## **Abstract**

This rigorous thesis concerns the institute of pre-emption right in the contemporary Czech legal system, specifically in relation to immovable property. The thesis examines the theoretical essence of pre-emption right, however for the most part it focuses on the analysis and interpretation of the applicable legislation. The thesis draws widely on the literature and case law originating from the 1990s to the present. Consistently throughout the thesis, a historical comparison is also made with the legal regulation in force in our territory until the year 1950, drawing numerous incentives especially from interwar case law and legal commentary. Peripherally, although not insignificantly, a comparison is made with the legislation from the socialist period. Occasionally, comparisons are also made with the current legislation on pre-emption right in the Federal Republic of Germany.

The thesis concerns both contractual and statutory pre-emption rights. The regulation of the contractual pre-emption right in § 2140 et seq. of the Civil Code is examined comprehensively and in detail, as well as the statutory pre-emption rights contained in § 1124, § 1187, § 1254 and 3056 of the Civil Code. The thesis systematically explores the issue of the creation and duration of the pre-emption right and its execution. It raises the questions in which moment in time an effective offer can be made to the pre-emptor, what should be the content and form of such offer and its acceptance, and what follows in the event of its acceptance. The issue of conflict of pre-emption rights is also addressed. Significant attention is paid to the consequences of breach of the pre-emption right. Among other, the question of possible invalidity of the contract is examined here, as well as the question of the review of compliance with, or violation of the pre-emption right by the cadastral authority in the registration procedure.

In addition to the substantive law, the thesis also details the procedural aspects of the pre-emption right in relation to immovable property. Individual claims are analysed particularly in terms of the prayer for relief and the burden of proof. The issue of applicable law and the jurisdiction of the courts in the event of a dispute with a cross-border element is also addressed. A chapter examining the role of pre-emption in enforcement and insolvency proceedings is also included.

The penultimate chapter of the thesis focuses on statutory pre-emption rights relevant to immovable property across the entire current legal system of the Czech Republic. The last chapter covers the now historical general statutory right of pre-emption of co-owners,

the development of which, from its origins until its repeal, is comprehensively described as well as briefly analysed in this chapter.

**Key words: pre-emption right, retract, immovable property**