

The Institute of the Right to Build in the Context of the Recodification of Private Law in the Czech Republic

Abstract

This master thesis is devoted to a comprehensive analysis of the legal regulation of the right to build as a legal institute reintroduced into the legal system of the Czech Republic on 1 January 2014 with the entry into force of the Act No. 89/2012 Coll., the Czech Civil Code, including the placing of the right to build in the context of its historical background or its comparison with the corresponding applicable legal regulations of foreign countries, which represent sources of inspiration for the legal regulation in the Czech Republic. The right to build allows, in particular, the construction of a building by the builder on land that is not owned by him, or, in general, allows the builder to have a building on such land. This legal institute represents a special temporary exception of application of the legal principle of *superficies solo cedit*. The building, which becomes part of the right to build for the duration of the right itself, does not, according to the general rules of law, accrue to the land on which it has been built.

In the introductory part, the thesis focuses on a description of the historical legal development of the right to build from its Roman law origins. This is followed by the analysis of rights and obligations to a land under the feudal superiority laws and by the analysis of modalities of use and enjoyment of land in the 18th and 19th centuries. Further chapters are devoted to the positive legal definition of the right to build under special legislation dated 1912, 1947, as well as the Act No. 141/1950 Coll., the Civil Code.

The key part of the thesis deals with the general legal analysis of the institute of the right to build according to the valid and effective legal regulation of the Act No. 89/2012 Coll., the Czech Civil Code. This part contains the definition of the right to build as a special property right to a foreign thing, the meaning and purpose of the right to build and a comprehensive view of the subjects of the right to build. A detailed analysis of the other basic elements of the right to build follows further. This includes an interpretation of the legal term “building complying with the right to build” and, similarly, the private law definition of a land. An essential part of the thesis is formed by the analysis of the mutual rights and obligations of the subjects to the right to build.

Furthermore, the thesis deals with the titles of creation of the right to build, which include a contract, acquisitive prescription and a decision of a public authority, also with the analysis of key elements affecting the duration of the right to build and with the interpretation of permitted legal dispositions with the right to build.

The last part of the thesis is devoted to a comprehensive legal analysis of the termination of the right to build and the related consequences. Therefore, an analysis of the mutual settlement of the subjects after the termination of the right to build is also contained herein.