



## News No. 6/2011

### Recodification of Czech Private Law – Part 2

As previously mentioned in News No 2/2011, the Czech government passed the draft Civil Code on 18<sup>th</sup> May 2011. On 9<sup>th</sup> November 2011 the bill, as amended, was adopted by the Chamber of Deputies of the Czech Republic and submitted to the Senate.

Although, contrary to expectations, in all likelihood the new Civil Code will not become effective until 1<sup>st</sup> January 2014, we will keep you informed on the changes the new regulation shall bring. In this issue we will concentrate on principal changes in the area of rights in rem.

#### Definition of “thing”

The new Civil Code defines a “thing” more broadly than the present legal regulation. Now, all objects, both material and immaterial, will be the subject of ownership rights. The thing in the legal sense will be defined as anything being different from a person and serving human needs. However, in contrast to the current regulation, living animals shall not be considered things in the legal sense.

#### Extending the list of rights in rem

The present Civil Code includes under the term rights in rem the ownership rights and rights in re aliena (easements, lien and right of retention). The draft Civil Code goes back to the traditional regulation of rights in rem, extending the list thereof and changing the system of their regulation.

Easements are now divided into servitudes and real burdens. Servitude shall mean any easement obligating the owner of a thing to suffer something or to omit something in favour of another person (e.g. right of way, right to graze). A real burden may be established with regard to things entered into a public register. The temporary owner of them is obliged as debtor to give something to the beneficiary or to act.



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The main change compared to the present legal regulation represents the re-introduction of the material publicity principle. The state of all data available in public records (Real Estate Cadastre, patent register ...) shall be deemed to be the factual valid legal state against anybody acting in good faith in the registration.

## **Possession**

Also the new Civil Code shall distinguish between lawful and unlawful possession, distinguishing furthermore between fair and unfair possession with a shift in meaning of these words. Now the possessor's good faith shall be connected with fair possession. Lawful possession shall be possible only if based on legal grounds.

## **Construction as part of land**

The new Civil Code introduces the principle respected in most foreign legal orders according to which buildings and other constructions firmly attached to the land shall not be separate things. Accordingly, buildings shall be considered part of the land as fixtures in the land which shall be considered to be the main thing. Both the space above and beneath the surface shall be part of the land itself.

If, at the time the new Civil Code takes effect, the owner of the land and the owner of the building constructed on it are different persons, the owner of land shall have the option to buy the building and, at the same time, the owner of the building shall have the option to buy the land by law.

## **Right of construction**

Also the right of construction is re-introduced in Czech law. The right of construction shall be established as a temporary right in rem in favour of the proprietor to another party's plot with or without consideration. If established by contract, the right of construction shall arise by its incorporation into the Real Estate Cadastre.



### **Acquisition of ownership right from non-owner**

Contrary to the present legal regulation, the draft Civil Code enables one to acquire ownership from a person who is not the owner. This institute shall, however, be applied only exceptionally. The purchaser becomes the new owner of a movable thing as long as he buys the thing in good faith that the seller is its owner or is, at least, entitled to sell the thing in question. The purchaser shall acquire the ownership right immediately.

### **Change in method of acquisition of ownership by contract**

Under the present legal regulation, the ownership right to movable things is acquired by entering into the contract and handing over the thing. When transferring the ownership right to immovable property, the ownership right is acquired at the time of its entry into the Real Estate Cadastre.

Under the new Civil Code, coming into effect of the contract should be sufficient to change the ownership of movable things in the future. In the case of real estate property, however, the present state shall be preserved and the ownership title shall arise by its incorporation into the Real Estate Cadastre.

### **Administration of the property of others**

The administration of the property of others (trust) is an entirely new institute in the Civil Code. The bill distinguishes between simple and full administration of the property of others. The Civil Code regulates in detail the administration rules, in particular the administrator's duties towards the beneficiary and duties of the administrator and the beneficiary towards third parties.

A separate chapter in the regulation of administration of the property of others is dedicated to the trust fund. The principle of a trust fund is severance of a part of property and its designation for a certain purpose. Thereby a separate estate is formed which the original owner has no ownership rights to. Those rights are exercised by the trustee who is, however, not owner of the trust fund either. The administrator is obliged to economize and multiply the trust fund estate, strive to achieve the purpose of the fund and to respect the rights of beneficiaries.



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