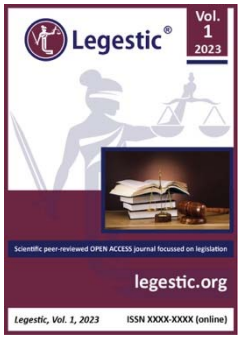

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Institute of personal use in the legal regulation of socialist Czechoslovakia in the years 1948-1989

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Abstract

This article describes the institute of personal use in the legal system of socialist Czechoslovakia in the years 1948-1989. The article aims to point out the changes in the legislation of the institutes of substantive rights in the legal order of socialist Czechoslovakia in the years 1948-1989 with special attention to property rights. The most fundamental change was the breaking of the unified institution of ownership, and on the contrary, new diverse forms of use of agricultural land and housing gained importance, which significantly suppressed the broad meaning of ownership. Currently, the Civil Code (Act No. 40/1964 Coll.) does not contain the relevant provisions on personal use of land since amendment No. 501/1991 Coll. the right of personal use of the land, which arose before the amendment in question came into effect according to the legal regulations in force at that time, was changed to the ownership of natural persons. It meant that a citizen who, for personal use, established a building on land belonging to the state thereby became the owner of the land in question.

Keywords: development, substantive rights, Civil code, legal order, Czechoslovakia.

1. Introduction

After an absence of almost forty years, the general, institutional, and comprehensive regulation of property law returned to the Czechoslovak legal order through the amendment of the Civil Code (Act No. 509/1991 Coll.) **[1]** and is contained in its second part. Until April 1, 1964, during the period of validity of the Civil Code (hereinafter referred to as the Civil Code) from 1950, there was still a separate regulation of real property rights, including individual types of real rights, but in a significantly modified form, mainly influenced by the replacement of the single concept of property right with a system of several types and forms ownership in the sense of the dominant socialist doctrine.

The ideological coloring of the concept and content of the Civil Code from 1950 was shown in a new light after the publication of the next Civil Code in 1964. If in the Civil Code from 1950, the traditional institutions of Roman and continental law, as well as the overall concept of the code, were influenced by the ideas of Marxism-Leninism, then in the Civil Code from 1964, they were completely deformed programmatically **[2]**.

A number of traditional institutions, which are the cornerstone or unifying element of civil law of the continental type, have either been completely eliminated or at least pushed to the margins of legal regulation. In the adjustment, traditional institutions such as tenure and holding, servitudes **[3]**, leases were eliminated, and on the contrary, alternatives were introduced in the form of personal use, services, etc.

2. Changes in the field of ownership after the adoption of the Civil Code of 1950

From January 1, 1951, civil law relations throughout the territory of the Czechoslovak Republic were governed by the new Act No. 141/1950 Coll. **[4]**, which was characterized by a relatively significant degree of abstractness of the legislation. However, this did not apply to the area of regulation of property rights **[5]**. Property law was considered the "foundation and backbone" of the new civil law **[6]**, breaking the Roman law concept of unified private property as the conceptually unlimited dominion of man over things and distinguishing exploitative private property from the socialist property and non-exploitative personal property **[7]**. This distinction of individual types of ownership continued in its unchanged form until 1964.

The basis of the new civil law, which was based on the Constitution of May 9, was a new type of property, socialist property **[8]**, which was the strongest pillar of the socialist construction of the state. The highest form of socialist ownership was then stating socialist ownership, the object of which was the common property of all the people - national property. In addition to it, communal ownership was recognized, but it was not elaborated in the Civil Code (§ 149), cooperative ownership (ownership of people's cooperatives), personal ownership of means of personal consumption, and, to a limited extent, private ownership (§ 158).

According to the explanatory report to the Civil Code, "property rights are not defined by the syllabus; the definition of ownership does not even seem necessary." **[9]**. Only the state and people's cooperatives could be socialist owners. Only the state could be the owner of national property. The state managed the national property either directly through its authorities or could entrust parts of the national property to national and municipal enterprises, which then managed these property assets according to special regulations. Parts of the national property could also be entrusted to people's cooperatives, mainly agricultural ones, for permanent use (§ 103) **[10]**. However, this provision could in no case be interpreted in such a way that the state would transfer the ownership right to the mentioned organizations. It was only about the right to use part of the national property, not to appropriate it. This also corresponded to the rule enshrined in Article 102, according to which national property was exclusively state socialist property.

The provisions on the limitation of property rights are based on the provisions of § 9, § 161, and § 164 of the Constitution of May 9, which subordinates the exercise of everyone, including individual ownership, to a unified economic plan. Increased protection of socialist property **[11]** is manifested, and civil-law restrictions are imposed so that things cannot be transferred from socialist property to private ownership, by establishing the fundamental inalienability of objects of socialist property. However, as long as socialist production aims to satisfy the personal consumption of workers, it is of course permissible for the products of socialist production to be transferred to personal ownership, which is expressed by the freedom of disposal within the framework of "ordinary management." **[12]**. Furthermore, the requirement that the individual coordinate his interests with the interests of others are remembered companies; therefore, it is necessary to establish restrictions arising from the interests of neighbors, immission, etc., while abandoning the existing case history and leaving the discretion of the court. In addition, the owner is obliged to tolerate the necessary use of the thing by a third party in a state of emergency or in the general interest (§ 108 of the Civil Code).

The Civil Code of 1950 abandoned the traditional principle that "the surface gives way to the land" **[13]** or that "the owner of the land is also the owner of the structure built on it" **[14]**. The main reason for the implementation of this step was the problems that could arise for unified peasant cooperatives: under the previous valid regulation, buildings built by unified peasant cooperatives on private land would become the property of the owner of the land. Likewise, thanks to this move, it was possible for individuals to build privately owned houses on a state or cooperative land. Therefore, the provision of § 155 stated that the owner of the building can be a person different from the owner of the land **[15]**.

3. Ownership structure in the 1964 Civil Code

The Czechoslovak legal order defined 4 basic forms of ownership: state ownership and cooperative ownership (as collective forms of ownership), and then personal ownership and private ownership (as individual forms of ownership). The names of individual types of ownership differed in the course of development, but above all with the adoption of the Civil Code of 1964 **[16]**. For example, it stopped using the term state ownership, as the legislator used the broader term "socialist social ownership", which includes state ownership. Although the adjective "social" was already used with socialist ownership by the OZ from 1950 (§ 100), in this case, it was rather an ideological expression of the nature of the institute than part of the name of a new form of ownership.

The so-called socialist property itself was not a type of property right, but a category of a set of legally privileged types of property, which included state, cooperative, and personal property. The Civil Code from 1964 established that the source of personal property can only be the citizen's work for the benefit of society (or any other honest source) and that the objects of personal property must be consumable in nature. In addition, the Civil Code from 1964 established as a criterion for the determination of personal property the extent of the property, given not only by the volume of the property but also by the size of specific things, especially family homes (§ 128). The exact limit of the scope of the property was not explicitly established by law. Section 126, which established that personal property serves to satisfy personal material and cultural needs, was a certain guideline for judicial decision-making. The Civil Code from 1964 also allowed private ownership, the basis of which was the ownership of the means of production, newly limited by the fact that it could not serve the exploitation of man by man, that is, that the means of production could only be used by their owner.

According to § 129 of the Civil Code from 1964, only a single-family house could be in personal ownership, because this number ensured the dignified right of the worker to housing and at the same time prevented the (then unacceptable) accumulation of property. If a citizen-owned two or more family houses, the second and subsequent houses were not personal property, but private property. The same conclusions applied to building plots. Personal property was supposed to exist only to the extent sufficient to satisfy the basic needs of the individual. Anything else that did not serve to satisfy these needs could no longer be part of personal property. In the future, however, it was assumed that personal property would not be necessary for a communist society because the basic needs of each individual would be met directly from the resources of the entire society **[17]**.

In contrast to personal property, private property as another form of individual property did not have the nature of socialist type property. This was primarily reflected in the development of the legal regulation of private property. While at the beginning of the 1950s, private property was perceived as a survival of old bourgeois relations, but as at least a tolerated form of ownership within the policy of gradual transition to socialist economic conditions, in the 1960s it became an undesirable institution. Therefore, the regulation of private property in the Civil Code from 1964 was hidden until the final provisions of the code (Part 8. Final provisions, Chapter 1. Regulation of other civil law relations, § 489 et seq.) **[18]**, wherein § 489 it was stated that civil law relations arise also from individual ownership to things that are not the subject of personal ownership (private ownership), and that this ownership is also protected against unauthorized interference. It is obvious that the Civil Code from 1964 also provided for the removal or a drastic reduction of private property and considered personal property to be the only permissible form of an individual property.

In the spirit of promoting economic centralism, the Civil Code was supposed to ensure programmatic uniformity of the standard of living as part of the regulation of property rights, as well as state supervision over all property transactions in the state **[19]**. This is most clearly seen in the provisions of § 130 par. 2, which, within the framework of the regulation of personal property, established that "things accumulated contrary to the interests of society beyond the personal needs of the owner, his family, and household do not enjoy the protection of personal property".

The provision of § 490 par. 2. According to his diction, citizens could only transfer undeveloped building plots to the state or a socialist organization. Since in the 1960s, due to the phenomenon of squatting and the related interest in building land, the frequency of trading with private building land began to increase (since the state was unable to satisfy this interest), the said provision was supposed to

prevent these business practices. Undeveloped building plots could only be alienated between relatives in the direct line and between siblings.

Shortly after the publication of the Civil Code in 1964, it became clear that the programmatic legislative experiment in the form of a radically conceived code of civil law had not succeeded. Therefore, in 1982, extensive amendment No. 131/1982 Coll., which fundamentally changed the text of the OZ from 1964, by returning most of the important institutes. Conceptually, possession was re-introduced, and institutionally, also holding, albeit in a significantly distorted form reflecting legislative efforts to suppress the meaning of property rights and replace it with the institution of personal use. Similarly, a number of other indispensable institutes were resuscitated, the restoration of which was required by practice. According to the inserted provision of § 453a, things that the owner cannot use in the usual way as a result of his illegal actions were subject to confiscation and became the property of the state. It was a provision directed primarily against emigrants, i.e. j. to people who left Czechoslovakia without a state permit or crossed the state borders illegally. The property of these persons (primarily real estate) belonged ex lege to the state **[20]**.

4. The right of personal use

A key change in the previous arrangement of property rights (communist doctrine rejected the very concept of property rights) was the hard enforcement of entirely new institutions, the purpose of which was to wean people from the need to own, while the advantages of using things over owning them were repeatedly emphasized. The traditional institution of property rights was largely relegated to the background to replace it with certain substitutive institutions designed to force people to change their approach to property. These were primarily different variants of the so-called institute. of personal use, which was to gradually replace not only property rights but also real rights, including real rights to other people's property (mainly encumbrances). In practice, it was an institute entitling primarily an individual to use property in the state and cooperative ownership, in a form similar in content to real rights to someone else's property. So it was a kind of quasi-ownership, or about creating an impression about him. Its significance, however, had primarily an ideological background and was proclamatively expressed in § 124 of the Civil Code from 1964, which described the role that use should play in the reform of society under the influence of civil law norms: "Public facilities serve the social use of citizens, such as transport, health, cultural, social, physical education, and recreation." § 124 of the Civil Code from 1964 (Act No. 40/1964 Coll.) **[21]**.

The distribution of assets among the members of the socialist society was not carried out only based on the acquisition of property into personal ownership, but also by allowing the state to leave part of the socialist property to citizens for personal use **[22]**. Thus, it was not a transfer of ownership rights, but the provision of the possibility of using a part of the socialist (common) property to satisfy legitimate material and cultural needs. Personal use of apartments, other rooms, and the land was regulated in the provisions of § 152 et seq. The right of personal use was canceled after the change in social conditions after 1989 when it was changed by law to either ownership or lease **[23].**

The institution of personal use was not a complete novelty. Structurally, it was built on the older institution of permanent use, which was modified already in the Civil Code from 1950 (§ 103 par. 2 of the Civil Code from 1950). In contrast to personal use, which was supposed to satisfy the personal needs of citizens, the purpose of permanent use was primarily to provide part of the national property for the use of socialist legal entities, but primarily peasant cooperatives, that is, non-state organizations. The object of permanent use could be both movable and immovable property, although according to vl. born no. 110/1953 Coll. **[24]** it was possible to hand over movable things for permanent use only exceptionally if there were special reasons for this. Thus, in practice, the institute of permanent use most often served for the establishment of buildings on state land, which was the basis for the later institute of personal use of land. However, permanent use differed from it in that its subject could only be a socialist legal entity, and thus it could not even serve to satisfy the personal needs of citizens.

The institute of personal use (or "rights of personal use") was designed primarily for individual legal disposition of land and apartments. The personal use of land was a substitute not only for the ownership

right to land but also for other traditional real rights, especially the abolished institution of real burdens (or servitudes). The Civil Code from 1964 regulated the institute of real burdens, but only with regard to the ongoing legal relationships from the previous Civil Code. However, the future of real rights to another's property was indicated by its placement at the very end of the Civil Code among the final provisions (§ 495). The specific meaning of personal use was defined by § 198 of the Civil Code from 1964: "The right of personal use of land is used so that citizens can build a family house, a holiday cottage or a garage or set up a garden on the land to which the right is established." (§ 198 of the Civil Code from 1964).

First of all, the Civil Code regulated the personal use of apartments. According to the provisions of § 153, it was valid that state, cooperative, and other socialist organizations leave apartments to citizens for personal use without determining the period of use, and that for payment (only if the law provides otherwise). In the first place, it was necessary for the local national committee or other competent authority to decide on the allocation of the apartment according to the regulations on the management of apartments (or another legal fact). Based on this decision, the citizen has the right to have the organization conclude an agreement with him on handing over and taking over the apartment. With the creation of the agreement, the citizen became an authorized entity, when the right consisted of the use of the apartment. In addition to this possibility, the Civil Code also recognized the personal use of a cooperative apartment, when the right for a citizen to have a cooperative apartment allocated for personal use by the cooperative body was created by paying off the member's share.

Furthermore, the Civil Code regulated the personal use of other living rooms. According to the provisions of § 190, the right to use a living room arose based on an agreement that was concluded after the local national committee or another body competent under the regulations on housing management made a decision on the allocation of a living room in facilities intended for permanent residence. Similarly, it was possible to obtain the right of personal use of a room not used for living, such as a garage, studio, warehouse, etc. A completely separate category was the so-called personal use of land. However, the decision on the allocation of land for personal use was not entrusted to the local but to the district national committee **[25]**.

Personal use of land was in a certain sense a necessity, stemming from the ideological prohibition of personal ownership of land. In practice, however, this meant a paradoxical disadvantage for the otherwise politically privileged layer of the working class, for whom the availability of land for construction was very limited. Building plots, which were increasingly required, were either privately owned or owned by the state, which, however, could not transfer these plots to personal ownership. Personal use of land (as well as apartments) allowed the state to satisfy the demand of citizens while simultaneously maintaining ownership and control of the state over real estate.

Personal use gradually became a universal means of solving the difficulties that quickly began to appear after the introduction of the Civil Code of 1964. An example in this direction can be the institute of endurance, which was eliminated by the Civil Code in 1964, but in response to complaints from the practice, it was re-introduced by amendment no. 131/1982 Coll. [26] The amended version of the Civil Code in § 135a established that holding does cause a change in the subject of property rights (as well as the traditional understanding of this institution), but the acquirer will not be the holder, but ex lege the state. At the same time, the holder himself will only have the right to agree on the personal use of the land held with him. It was a break-neck adaptation of a traditional institution, the existence of which proved to be necessary in the legal order, in the spirit of the new civil law.

5. Conclusion

While in the first stage of civil law reform, traditional Roman law institutions were deformed according to the ideological requirements for the construction of a people's democratic legal order, in the second stage, based on the adoption of the Civil Code in 1964, several of these institutes were eliminated and replaced by completely newly constructed institutes corresponding to the construction criteria socialism and communism. The most fundamental change was the breaking of the unified institution of ownership, and on the contrary, new diverse forms of use of agricultural land and housing gained importance, which significantly suppressed the broad meaning of ownership.

The Civil Code of 1964 introduced the institution of "personal use of land", which in a certain way shared characteristic features with the right of construction. It was mainly about the fact that based on personal use of land, a citizen could set up a building on state land and then use the land together with the building. However, the goal pursued by the institute in question was diametrically different from the essence of construction law. The right of construction was supposed to somehow break the "surfaces solo credit" principle, to enable the builder to set up a building on someone else's land and then use it.

The Civil Code from 1964 was amended in detail in connection with the introduction of the so-called personal use of apartments and land, legal conditions inside and outside construction housing cooperatives, the meaning of which was based on the newly introduced concept of the so-called cooperative apartments. The Civil Code of 1964 paid special attention to the adjustment of the legal relationship of citizens to apartments and land. The regulation of the use of the apartment itself represents 37 provisions, together with the regulation of other residential and non-residential premises and land 69 provisions, which compared to the regulation of possession or holding after the amendment in 1982 is a difference of 68 provisions of the law. Likewise, the 1964 amendment to the Civil Code included only two provisions (9 paragraphs) in the 1964 amendment to the civil code, which regulated the ABGB in 58 paragraphs. On the contrary, the colossal legal regulation of apartments and land was further expanded with the 1964 amendment to the Civil Code.

Currently, the Civil Code (Act No. 40/1964 Coll.) does not contain the relevant provisions on personal use of land, since amendment No. 501/1991 Coll. the right of personal use of the land, which arose before the amendment in question came into effect according to the legal regulations in force at that time, was changed to the ownership of natural persons. It meant that a citizen who, for personal use, established a building on land belonging to the state, thereby became the owner of the land in question.

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