## *2. SO-CALLED PUBLIC THING AS AN OBJECT OF "PUBLIC OWNERSHIP"*

The issue of the so-called public thing presents a question which should not be omitted when talking about this topic. It is the issue that Jiří Pražák has already labeled "one of the most disputable disciplines of public law "[4] and which lies "in the center of the private and public law intersection". This issue is characterized by its sensitive reactions to the state of society, to, let's say, "rivalry and its social and liberal tendencies" leading to either making the law more public or, to the contrary, the privatization of the law[5]. It is no surprise that these law changes in stressing its public character are again and again opening or newly postulating questions concerning content and extent of the concept of the public thing. When the public character of law predominates, the public thing stops to be recognized as a mixed-law institute [as a thing viewed as "common" object of (private) ownership right, but restricted only by the public purpose it is dedicated to fulfill]. Only its public dedication is stressed out which leads to belittling or even negating the ownership right of a specific owner.[6]

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[4] *Pražák, J.* Spor o příslušnost mezi soudy a úřady správními. Vol. II. Prague : F. Simacek, Publisher, 1886, p- 184, note 9.

[5] Closer to the topic see *Havlan, P.* op. cit. sub 1, p. 44-47.

[6] From the historical point of view the latter occurred in two theoretical concepts. The first of the two operates **with the "emission" of the so-called supreme** right (*Hoheitsrecht*), respectively of police right (Polizeirecht) and excludes (denies) ownership of public things completely [its French analogy is represented by the concept of „mere" police and administration (*la garde et surintendance*, respectively *la police et administration*) of the state over public domain (*domaine publice*)]. The second, from theoretical point of view, may be more interesting and elegant (but in praxis of no greater importance than what Hoetzel had already mentioned), independent in its design public ownership of public things conception as public law ownership (the name of a famous German scientist Otto Mayer, who studied public administration, is usually cited in the first place when speaking of the above mentioned theory – see *Mayer, O.* Deutsches Verwaltungsrecht. II. Bd. Leipzig : Duncker Humblot, 1896, p. 60 and up). The so-called civil right conception of ownership represents the inherent counteract of the above mentioned public law conceptions. For more on this topic see Ibidem p. 62-68 and literature cited therein.

Concerning the public thing, it is worth mentioning that literature has provided a lot of classifications and different enumerations of particular public things. It was justifiably stated, that "the question of defining a specific thing as public might be answered only when taking into account that particular state and time. Everything depends on that particular level of economic and social development and its influence on legal order and administrative practices."[7] Despite of various classifications of public things and despite of the previous statement, we might say that there exist something like:

- *financial* (or fiscal) *property* [important for its capital value and/or revenue],
- *administrative property* (used directly for the purposes of public administration – administrative buildings, company cars, equipment and so forth)[8], and
- *things in common use* (in other words so called public domain); these might be, concerning the above mentioned "making law more public" conceptions as the most typical public things.

That means that despite the considerable teleological dimension of the institute of public thing, it is necessary to take the public thing institute into account in certain circumstances.

It is hard to doubt that the subject matter of public ownership (as defined in sub.1) is not influenced by the type of "public thing", therefore, by its object. Naturally, the scope and character of rights and legal obligations differs when the object of ownership is represented by a thing of financial thing type or by a thing in common use. Distinct differences might be found even within these "groups" of things. For the sake of clarity, it is

[7] *Janovský, J.* Teorie veřejného vlastnictví (příspěvek k studiu právního řádu veřejného statku v Československu, Francii a Německu). 1st ed. Prague : Nákladem knihovny sborníku věd právních a státních, 1927, p. 23.

[8] Undoubtedly, there exist "borderline" things having several features of a finance property and several features of an administrative property at the same time. For example, rental houses which bring profit to their owners (thus we can think of this property as of "finance property") and at the same time they fulfill the "administrative role" (prescribed to municipalities by law) of satisfying citizens' demand (especially of the socially weak citizens) for accommodation (thus we can think of this property as the "administrative property" as well).

possible to say that public law regulations concerning a specific type of public thing could be sometimes complementary to private law regulations, other times it could be vice versa. Essentially, this (basically only quantitative) correlation should work on the basis of relation between general (private) law and special (public) law, naturally **concerning relativity of the classification itself and the fact that it usually fades.**