

DETERMINATION OF FLAT AND SUPERFICIES SOLO CEDIT PRINCIPLE

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Key words

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The aim of this work is to show how the superficies solo cedit principle, known from the ancient Roman Law, inputs the current legal adoption of real estates, namely flats, in the Czech legal order.

We focus the history of that principle. We point out that even in Rome were flats. But not as legal matters. The principle caused that just land was taken as a legal matter. Other staff was just a part of it and share the lines of the land property.

We see that the number of flats, called insulae in Rome, was quite high – over 23000, located in buildings sometimes even 7 floors high. In spite of the fact that mainly the members of idealistic law theory considered insulae as a legal matter (referencing to the conflict with the natural law (ius naturale) mentioned by the ancient lawyer Paulus), there is no mention in ancient law sources. It goes even against the logic of the Roman land law based on the superficies solo cedit principle.

As we know the mentioned principle acts strongly the de jure recognition of flat as a legal matter. We see the relation between the principle and flats as legal matters. In law orders where the principle is adopted there cannot be the flat accepted as a legal matter. But the reality is not monochrome and thus why there are usually exemptions in particular legal orders.

In addition we go through medieval Europe towards the 19th century where we see strong impact of Savigny's teaching on German legal order. He outlined that flat as a legal matter is a nonsense.

In Czech Republic the legal order was impressed by the former Austrian monarchy law. (e.g. the Allgemeines Bürgerliches Gesetzbuch (ABGB) – Civil law Code adopted in 1811; went to force in 1812). The ABGB was (in Austria still is) influenced by the Roman law reception and the principle was a part of czech law. Thats why there wasn't flats recognized as legal matters.

The legal framework for recognition of flat as a legal matter was adopted after WWII by the adoption of the new Civil Code called also the Middle Code (1950). It abolished the principle. Mainly due to the fact that the principle stood in the way of collectivization of czech country side.

The adoption of flat as legal matter arrived with the Flat Ownership Act in 1966. This was a specific norm. It was build on the monistic conception and only individuals were able to get the property of flat.

Difference came with the new Flat Ownership Act in 1994. This was build on dualistic conception and allowed also juristic person to be the owner. The ownership of flats is also possible due to fact of the Civil Code change – section 118 article 2 and section 125 appoint that flat is a possible legal matter.

The flat is not a legal matter generally but in a special statute regime. The essential mark of flat is its legal not an actual qualification. In the end of this work a regime of flat as a real property is mentioned.