

QUANTIFICATION OF THE AMOUNT OF UNJUST ENRICHMENT IN RELATION TO SALE OF A PLOT OF LAND BUILT UP WITH A STRUCTURE OF ANOTHER OWNER

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Abstract

The article is a short essay describing the previous and current situation in the legal regulation of the Czech Republic governing the two specific areas of evaluation referred to in the title:

- amount of unjust enrichment, and
- normal price of a plot of land built up with a structure of another owner.

The article's aim is to make the professional public familiar with and inform it about the legislation gaps existing in the Czech Republic, which are not only negatively reflected in the valuation practice, but also affect the general public. The topic of this article resulted from processing the issue of dissertations of the authors.

Keywords: Diversity of ownership, unjust enrichment, legislation in the Czech Republic

Introduction

The paper named Quantification of the Amount of Unjust Enrichment in Relation to Sale of a Plot of Land Built up with a Structure of Another Owner is included in the field forensic engineering due to the fact that this issue is very closely connected to the activities of experts and sworn experts in the area of economy, and according to the classification of the Ministry of Justice, it is included in the Directive of the Ministry of Justice of the Czech Socialist Republic dated 15 February 1973, Ref. No. 10/73-contr. about organisation, control and inspection of activities of sworn experts and interpreters as follows: Economy – Prices and Estimates – Real Estate Valuation.

The paper was created in response to the new Civil Code 89/2012 Coll. and the Property Valuation Act No. 151/1997 Coll., as amended, when despite every effort exerted by the legislators to regulate the proprietary situation of the entities impoverished as a result of unjust enrichment and to increase their legal certainty, we can see missing methodological procedures both for determination of the unjust enrichment amount and for determination of the normal price of the land in the case of different owners of the land and the structures built on such land.

The paper has been elaborated within the doctor degree study programme of Forensic Engineering of Brno University of Technology in relation to dissertations of the authors as a summary of the already published articles.

Previous legal regulation of the Czech Republic governing the respective issue

The previous Civil Code (Act No. 40/1964 Coll.) was enacted in 1964 and was valid until the end of 2013. During the time, it was subject to many amendments. The Civil Code was based on the situation of the 1960s and then existing opinions concerning ownership rights, a fact which caused one of the most important shortcomings of the code – different ownership of lands and structures built on such lands, in particular in Part One, Section 120 (2), which provided that **structure is not a part of the land**. Due to the aforementioned, the entire problem of different ownership and the following legal settlement of proprietary disputes and different interests of the individual owners continued.

Cancellation of the previous legal regulation and its replacement by the new Civil Code followed up the legal regulation of separated ownership of lands and structures. Contrary to the previous legal interpretation, this was not expressly specified in the Civil Code. Separate ownership of lands and structures was derived from the term "real estate" specified in Section 119 (2) of the Civil Code:

"Real estates are lands and structures connected to the land by a solid foundation." [3]

As obvious from the definition above, in the case of real estate determination, there were two "separate things" with possibly different civil law relationships. Separated ownership of structures and lands without any limitations was not very usual in other countries. Neighbouring Germany may be stated as an example, where the legal term "land" is considered as a synonym to the term "real estate". The reason is the same owner of the land and of the structure situated on the land.

In regard to the right of construction, which was regulated both during the effectiveness of the general civil code and in the Civil Code, the so-called right of personal use of land was its equivalent until the end of 1991 (until the Civil Code was amended) provided certain conditions were fulfilled. Pursuant to Section 198 of the CC, the right of personal use of lands was applied to allow citizens to build a family house, recreational facility, garage or small garden on the land plots, to which such right was established. It was possible to establish such right also for lands, on which the structures or small gardens have already been built. The right of personal use was not limited by time and passed to heirs. For example a family house built by the user in this manner was a part of the user's personal property pursuant to Section 217 of the CC.

Legal regulation of so-called unlawful construction has undergone several changes after the CC came into effect: according to the original wording of Section 221 of the CC, the court decided on the title to the unlawful construction. The court could under certain circumstances order the title to the construction to be held by the builder or order the builder to remove the construction.

The entire Heading Three of the Civil Code was devoted to unjust enrichment. The merits of unjust enrichment were regulated in legislation by Section 451 (2) of the Civil Code.

"Unjust enrichment is a proprietary benefit acquired by performance without any legal reason, by performance for an invalid legal reason or by performance for a legal reason which ceased to exist, as well any proprietary benefit acquired from fraudulent resources." [7]

However it is necessary to emphasize that unjust enrichment was also regulated in other spheres of law, for example in the business law and in the labour law.

The presently applicable legal regulations governing the respective issue

The actual private law codification therefore occurred as late as in the new Civil Code – Act No. 89/2012 Coll. enacted in 2012 and effective from 1 January 2014. However not only this Act was published in the collection of laws, but also Act No. 90/2012 on Business Corporations and Act No. 91/2012 Coll. on International Private Law. The "new Civil Code" pays major attention to the issue of unjust enrichment, namely in the provisions of Sections 2991 to 3005, and the proprietary rights are regulated in the third part of absolute proprietary rights in Sections 1084 to 1086. In application of these provisions we must bear in mind that the new Civil Code follows the idea: Everything which is not forbidden is allowed.

In the sphere of proprietary rights, the principle has been restored that **the structures will again become parts of the land, and the land owner is also the owner of the structure built on the land.**

The first mention that a structure becomes a part of the land is provided in Section 1083 of the CC regulating use of someone else's thing by the builder for construction on their land, when the structure becomes a part of the land. The land owner is obliged to compensate the thing's owner the value of the thing.

The legal regulation in Section 1084 concretely defines identity of the proprietary rights to the land and structure in a sentence appearing in paragraph 1:

"A structure built on someone else's land is owned by the land owner." [1]

In such case the land owner is obliged to compensate the person who built a structure on someone else's land in good faith, for the purposefully spent costs. The court may decide on the basis of the land owner's motion that the person who built a structure on someone else's land having no right to do so must remove the structure at their own costs and restore the land to the original condition. The court will take into consideration whether the structure was built in good faith or not.

Anyone who built a structure on someone else's land is entitled to claim from the land owner, who knew about building the structure and did not prohibit it without undue delay, **to transfer the land to the builder at the normal price.** Also the land owner has the right to claim from the structure builder to **buy the land at the normal price.** In such case the court may assign the title to the land to the construction builder and decide on their obligation to pay the land owner the respective compensation. [1]

With regard to comparison of the old and the new Civil Code in regard to unjust enrichment we can observe that some provisions have only been reworded, some provisions have been principally changed and some provisions are completely new. In general we may say that the new legal regulation protects the more impoverished party, and that is why it only incorporated a demonstrative list of acts representing unjust enrichment amended with a list of examples. For this reason, there is a key change in assessing unjust enrichment. It is newly judged also from the point of justice, decency and normal practice, not pursuant to law (and a new compound lexeme resulted from the aforementioned: "Enrichment without a just reason, impoverished, enriched, good faith, bad faith, etc.") [1]

The new Civil Code also establishes an obligation to take into account the amount of unjust enrichment at the moment the return is claimed. Also the principles of criminal law, institute of which should only be applied in marginal cases, were taken into consideration.

Regulations governing the valuation

Civil Code

The provision concerning prices is specified in Section 492 of the Civil Code:

(1) The value of a thing, if quantifiable in money, is its price. The price of a thing will be quoted as a normal price, unless otherwise agreed or provided for by law.

(2) Extraordinary price of a thing shall be quoted if its value is to be replaced with regard to special situation or special popularity caused by accidental features of the thing.

Act No. 526/1990 Coll. on prices

The normal price is defined in Act No. 526/1990 Coll. on prices as amended, especially by Act No. 403/2009 Coll. The validity of its application to this case and definitions of the normal price are as follows:

Section 1 – Subject of the Regulation

(1) The act applies to application, regulation and control of prices of products, outputs, works and services (hereinafter the "goods") for the domestic market, including prices of imported goods and prices of goods intended for export.

(2) Price is a monetary amount

- a) agreed upon the purchase and sale of goods pursuant to Sections 2 to 13, or*
- b) established according to a special regulation⁶ for other purposes than for sale.*

(3) The procedure according to this act also applies to transfers of rights and furthermore also to transfers and passages of titles to real estates including enjoyment rights to real estates.

Section 2 – Negotiating the Price

(6) The normal price for the purpose of this Act is the price of identical or (in regard of use) comparable or mutually substitutable goods freely agreed between the sellers and the buyers, who are independent from one another in regard to economy, capital or personnel, in the respective market, which is not endangered by effects of restriction of economic competition. If the price normal in the market cannot be quantified, the price for evaluation, if a more favourable economic position is not misused, shall be determined by calculation of the economically justified costs and a reasonable profit.

In Section 1 (2), the price is defined as a monetary amount, which is agreed upon purchase and sale of goods or as a monetary amount determined according to a special regulation for other purposes than sale. Special regulation here means Act No. 151/1997 Coll. on property valuation. [5]

Conclusion

The aim of the paper was to illustrate and describe for the professional public the situation in the Czech Republic in the field of real estate valuation, concretely with the focus on the sphere of unjust enrichment and the problem of different ownership of a land and the structure built on the land.

As is obvious from the above-described basic legal regulations governing this area, we may state that there is a considerable variability of solutions applied to concrete cases in practice.

Though legislators tried to harmonise the two spheres according to the applied foreign codes, the result is that the non-incorporated methodological procedure in settlement of the problem of different ownership causing possible unjust enrichment still exists.

We support our statement by the fact that these seemingly remote spheres in the valuation practice have the same insufficient legal regulation, which then negatively reflects in the process of definition of the unjust enrichment amount.

⁶Act No 151/1997 Coll. on valuation of property and on amending certain acts (Property Valuation Act).

We would like to point out that a problem may possibly incur, which will require regulation in the Czech Republic by a judicial decision. It is the case when a land built up with a structure of another owner is sold. The owner of the structure has the right to claim from the land owner to transfer the land at the normal price. Also the land owner has the right to claim from the structure builder to buy the land at the normal price. Due to mutual pre-emption rights, the market of entities potentially interested in buying the real estate is considerably limited and the normal price principle cannot be therefore adhered to. If an invalid contract is then entered into, the sold will be impoverished by the agreed amount equalling the normal price. This means that an unjust enrichment incurs here and it will be up to the sworn expert to quantify its amount. A problem appears here where it is not possible to apply the normal price provisions from the aforementioned act on normal price, because the conditions of the merits of this term are not met. Therefore a problem arises that in quantification of the unjust enrichment amount we cannot apply the provisions on normal price, because we have no competition market here. The Supreme Court or the Regulation to apply the statute will then also have to govern this missing regulation.

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