The Principle „Superficies Solo Cedit“ in the Czechoslovak Law of the 20th century

JUDr P. Salák jr.,PhD.

The principle superficies solo cedit in the Roman law

Movables x immovables

Lex XII Tabullarum – simply land /*fundus*/ and other things /*cetera res*/

"mobilia" - from Gaius

Immovable (real property) – definitely from Justinian Inst. 2,6, pr. *„…si mobilis erat, anno ubique, si immobilis, bienno tantum…"*

The principle superficies solo cedit

„...id, qoud in solo nostro ab aliquo aedificatus est, quamvis ille suo nomine aedificaverit, iure naturali nostrum fit, quia superficies solo cedit.“ /Gai 2, 73/,

„Semper superficiem solo cedere.“ /Ulp., D 43, 17, 3,7/

Its meaning – it simplifies legal relations /conveyances of real estate/ + increases legal peace /namely in the absence or low quality of real estate records/

Legal regulation by ABGB

„ 297 – Eben so gehören zu den unbeweglichen Sachen diejenigen, welche auf Grund und Boden in der Absicht aufgeführt werden, dass sie stets darauf blieben sollen, als: Häuser mit den in senkrechter Linie darüber befindlichen Luftraume.....“

"Rovněž tak patří k nemovitým věcem ty, které byly na zemi a půdě zřízeny s tím úmyslem, aby tam trvale zůstaly, jako: domy a jiné budovy se vzduchovým prostorem v kolmé čáře nad nimi; rovněž: nejen vše, co do země je zapuštěno, ve zdi upevněno, přinýtováno a přibito, jako: kotle na vaření piva, na pálení kořalky a zazděné skříně, nýbrž i takové věci, které jsou určeny, aby se jich při nějakém celku stále upotřebovalo: např. u studní okovy, provazy, řetězy, hasicí nářadí a podobně.”

Basic ideas:

- A construction (building) is a part of the plot of land
- Parts of constructions (buildings) are component parts of the plot of land
- A structural attachment of the building is an attachment of the plot of land
- It is not exactly distinguished between the component part and structural attachment

Efforts for the unification

The 20th years - the ministry required a translation of ABGB x disapproval of considerable authorities on civil law and Slovaks

1920 – Principles for a new codification

1926-1931 - Work of the supervision commission

1937 – The proposal published x the legislative process was suppressed by the Munich Diktat and the occupation

Legal regulation in the proposal of the Civil Code from the year 1937

83. **Movables and immovables**

Immovables are plots of land, temporary constructions (192), rights linked with a real estate ownership, as well as things and rights that were declared as immovable by the law; other things are movable.

84. **Parts of immovables**

The part of the plot of land is considered to be a room over the surface and under the surface, all constructions on the land, except of construction stated in 192, and other built structures and all vegetation grown there.

Civil Code 1950

- It was considered as a relatively good-class work x only thanks to the “quality” of the subsequent Civil Code from the year 1964.
- It observed the terminology and features of “bourgeois” civil codexes x a number of terms expressed a different meaning.
- Provisions were very brief - then an extensive domain for an interpretation of the court.
-A negative demarcation against the Roman law in the explanatory report was very often

Civil Code from the year 1964

- It overtook with its character even the exemplary Soviet Civil Code
- An absolute preference of the collective ownership /it did not manage to abolish a private ownership x Its modification was put aside from the rights in rem into the final provision.
- The institute of possession (demesne) and usucaption was removed / bourgeois anachronism/ x The novel from 1982 introduced again due to the insistence of lawyers from field experience.

Superficies Solo Cedit in the Communist Civil Codes

Civil Code 141/1950 Sb. /from 1.1.1951/

25 the second sentence: *"The construction is not a part of the plot of land."*

155 – The proprietor of the plot of land and of the construction can be different persons /x it is necessary to have the right of construction according 159/ This right could originate by the law (ex lege), by the decision of an administrative authority or by a contract. / 160/

Reasons of the modification

- The reason – collectivization - Collective Farm (JZD)
- Plots of land belonged still to individual co-operative farmers or to the state x if the cooperative built up there a construction then the construction felt to the proprietor of the land.

The contemporary legal literature – it argues by the Roman law: “Even the Roman law knew an exception from the principle Superficies solo cedit, and that is the institute superficies.”
x it is not identical with this situation:
Superficies is not an exception from the principle – the plot of land is returned to the original proprietor after extinction of the right.
The building right in this form is known to the Austrian law and law of the First Republic /law no. 86/1912, then 88/1947

x The building right in the Civil code 1950 is different / 159 an/:
- The construction established just like that passed never /even not later/ on the owner of the land.
- The building right was possible to set up on the basis of the law (ex lege), by the decision of an administrative authority or by a contract x the contract required an approval of the people's committee
- 158 of the Code – Socialist organizations that had used permanently not own plots of land were allowed to build there even without the building right.
-- The building right may be established not only to a construction but also to a better economic utilization /a meadow changes into a garden/.

The Civil Code from 1964

does not say it explicitly, however this principle remains valid. /
A language interpretation - 119 art. 2 of the Law/:

119

(1) Things are movable or immovable.

(2) Immovables are plots of land and constructions connected with the ground by a firm foundation.

120

The part of things is whatever belongs to it by its nature and cannot be separated without a devaluation of the thing.

The building right was abolished by the law from the year 1964 and was substituted by the institute of the individual usage of the land / 198/.

With a bit of exaggeration, it is possible to liken it to the split property – dominium utile.

After the year 1989

The new Civil Code was not adopted – the priority was the Commercial Code x
The Code was amended expressively no. 509/1991 Sb. - a renewal of the freedom of contract, preferences of the private ownership x the principle superficies solo cedit were not valid any more, and it was expressively stated / 120 art. 2/:

119

(1)Things are movable or immovable.

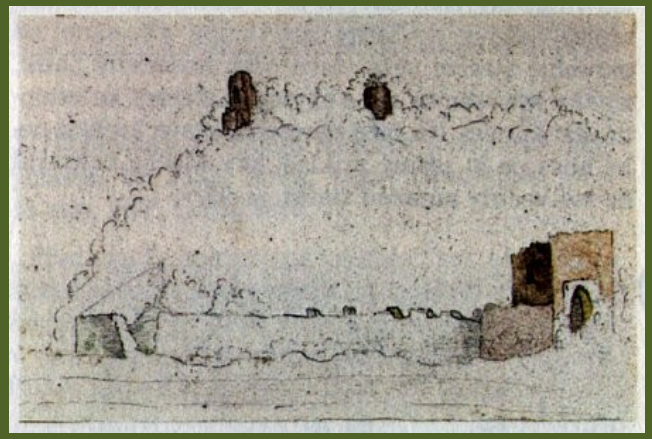
(2)Immovables are plots of land and constructions connected with the ground by a firm foundation.

120

(1) The part of things is whatever belongs to it by its nature and cannot be separated without a devaluation of the thing.

(2) The construction is not a part of the plot of land.

The institution of the individual usage converted to the property right (ownership right).



Problems

Calvary

Who is the owner?
Theory of the abandoned thing – and the owner after one year will be the municipallity

What is the construction?

- The term “construction” is not defined in the Civil Code.
- *“all built structures…”* exist in the Construction Act x there is a construction understands dynamically /building activity/ x it is a definition for the Construction Act and it is not applicable for the Civil Code /the Supreme Court, ref. 22 from 26.8. 2002 Cdo 1221/2002/, a construction is an outcome in the Civil Code /the Supreme Court 30.9.1998, ref. 33 Cdon 111/98/

The reasons of problems: ***restitutions*** – disputes between owners to whom the plots of land have been returned back and new owners who had built up there a construction/

Courts solved questions: What is a construction? – Swimming pool? Tennis court? Car parking place?
A construction as an outcome is the construction in accordance with the Civil Code x if it cannot be separated in fact, not even economically from the land, and the construction is its part and forms with it one subject (thing) /car parking place – Cdon1414/97 from 26.10.199, agricultural drain system, quarry/

From when a construction is possible to be considered as the construction?

A construction is understood as two different things according to the Construction Law and according to the Civil Code.

– For the Civil Code, there is the decisive reason from when is possible to consider the construction as the independent thing.

- A fixed practice of the court (judicature) – from the moment when the disposition of the 1st /ground/ floor is evident / Field works are not sufficient, the activity must be qualitatively higher /NS sp. Zn. from 11.11.1992 CDO 111/92.1/

Till when is possible to consider a construction as the construction?

Judicature: The construction is an independent thing if the disposition of the 1st floor is apparent (evident).
Judicature: The construction became extinguished when the disposition of the 1st floor is not apparent (evident).
The Supreme Court of the Czech Republic 20 Cdo 931/99

Rarity – a dispute about the castle Stará Dubá

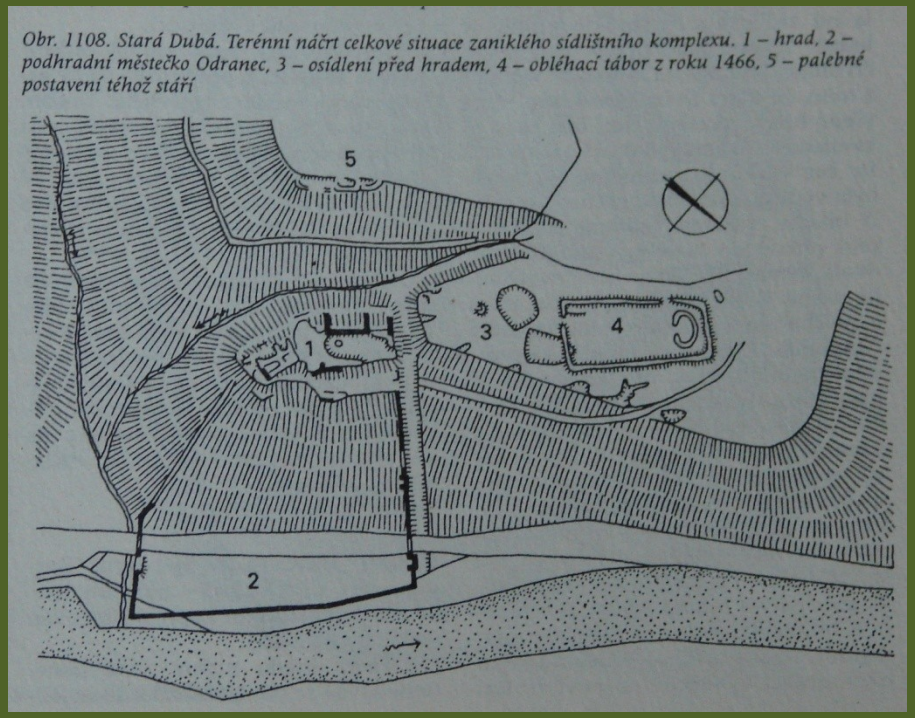
The judgement of the Czech Supreme Administrative Court 1 As 93/2008-95 if the ruins of the castle Stará Dubá are the building or they are the part of the land

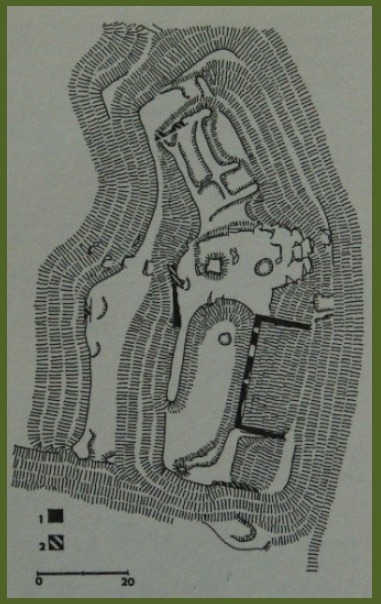
The problem – ruins of the castle Stará Dubá are on the land of the Forests of the Czech Republic. The company has a right to manage this land. In the year 2005, the Municipal Office in Benešov placed a duty on the Forests of the Czech Republic to care for the monument Stará Dubá under the State Monument Preservation Act. The state company brought a legal action against this decision declaring that the company had only the capacity to manage the land because the proprietor of the building and the land could be different persons and the ruins of the castle are the building and not a part of the land.

The historical meaning of Stará Dubá

At the time of its establishment in the 13th century, it was one of only two aristocratic castles that were able to compete to the kings castles in their dimension - Stará Dubá was one of them.

This listed monument includes: the ruins of the castle, the foundations of the settlement round the castle, the fortification of this townlet Odranec, fortified siege camp and fortified place for besiegers' artillery.





The judgement of the Czech Supreme Administrative Court 1 As 93/2008-95

The ruins of the castle Stará Dubá cannot be considered as an individual building as they are so rare that the whole disposition or the inner arrangement alone is not evident. Moreover, the whole area is covered with trees and the ruins merged naturally with the terrain. Anyway, the castle is registered as a *„Castle Stará Dubá - ruins of the castle and archaeological traces“* and it emphasises much more its connection with the land.

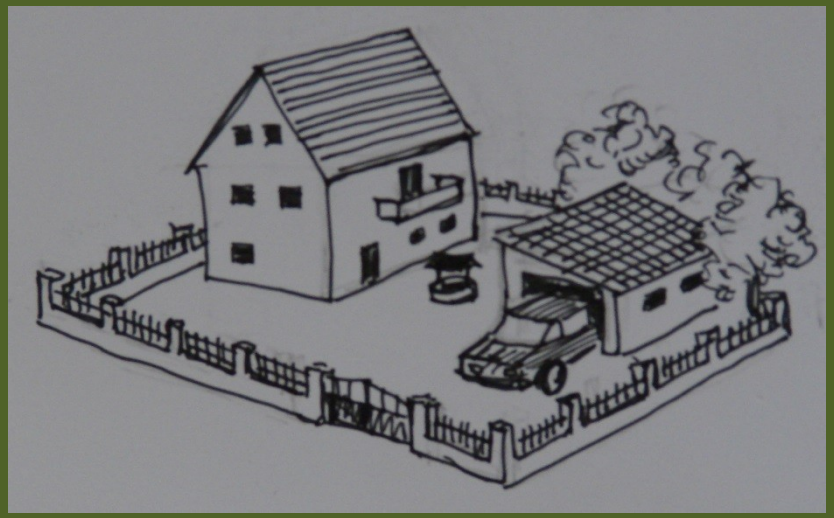
Problems

1. Is the construction a castle as a complex or as separate constructions?

2. So called „Closed Castle“

Problem I. – part 2 – Is castle a construction as a complex or individual constructions?

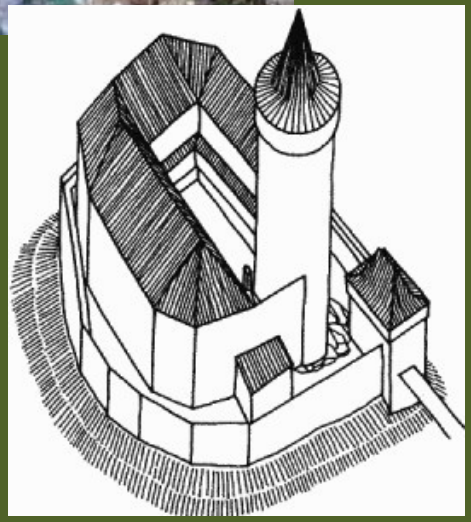
- House/palace – separate construction
- Garage/stable – separate construction
- Water well – part of the estate, in case it is stregthened e.g. by concrete rings, then it is a separate construction
- Brick fence/ defensive wall – separate construction



Problem 2.

“Closed castle” – a special expression for a certain type of demolition of the castle that was destroyed to prevent its use, the main tower is destroyed and its debris fill up other buildings and create a small hill of ruins and rubble.

An example of it is the castle Vízmburk – It was supposed before the archaeological searching started that only foundations would be found x the castle was preserved to the level of 1st floor.

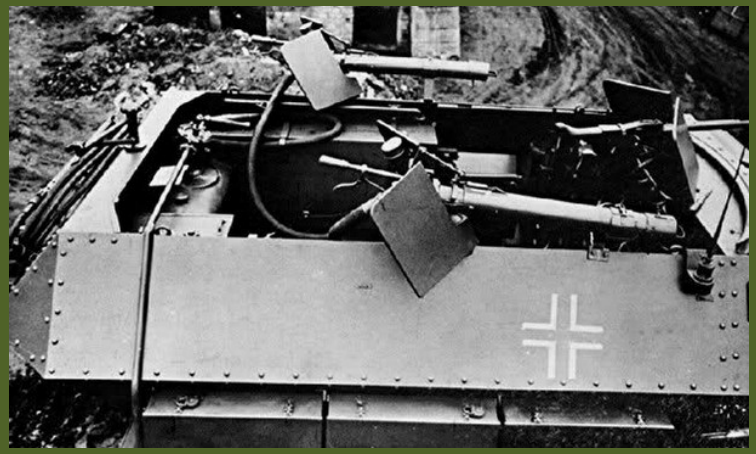


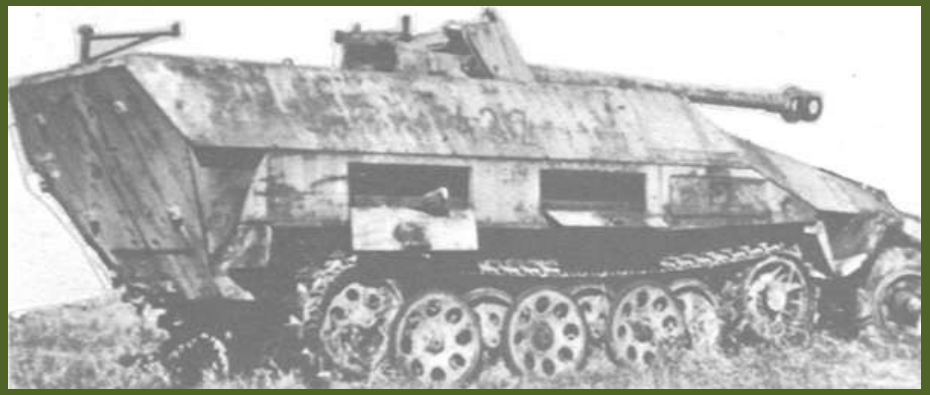
Sdkfz 251/1 Ausf D – as a construction

Sdkfz 251/1 Ausf D

Sdkfz 251 (Hanomag HI KI 6p)

German half-track armored vehicle designed for transprt of soldiers (mechanized infantery),
Crew 3 + 10
Produced in 1939-1945, in four variants, the large production run had Ausf. C (1941-1943) and D (1943-1944)
It exist 22 different versions: Infantry-carrier, armored ambulance, engineer, anti aircraft, flame throwe, anti tank,..)





OT 810

Armored infantery carrier of czechoslovak army ČSLA after WW2

Produced in1958-1962

In comparison to Sdkfz 251 has a little different carossery and motor Tatra

Army sell all cars to the privat sector at 1995

It was used for „rebuliding“ on replica of SdKfz 251

Discovery in Šumava

Official version
Military History Institute employees came to know about this unique piece from employees of Šumava National Park during inspection of a different discovery in this area.

Version of detectorweb
Mr. X heard, that there is Dkfz 251 in the area of Šumava National Park (former military training area). He found out a condition of it and filed an official written request for picking it up and transportion of these fragments. The request was headed towards deputy to NP for that area.
About 3 weeks there was a calling from a deputy to NP straight from terrain, where he tried to find a mentioned covering by a map enclosed to the request. In the end, I managed to direct him to the right place.
Time limit of 30 days from the request expired and no answer arrived. Mr. X waited for another 14 days before calling Šumava NP. „I just wanted to call you…“ was the first sentence in the receiver. Afterwards Mr. from NP started to describe all the anabasis of request. Althought everything started to look very promisingly, complications appeared when legal section of NP should express their opinion.

Discovery of back hull Sdkfz 251 Ausf. D Šumava

Reasons

Lawyers (to the surprise of the employee himself) found out, that request can not be positively disposed for three reasons:

1. It is on state estate. I ve expected this but I suppose it could be solved with a little good will during next negotiations.

2. All German equipment passed after the end of the war as ***the spoils of war***. The state does not distribute its estate just like this, but this reason could be easily solvable too.

3. The most surprising finding was, that estates of former military areas were transferred to NP ***without constructions standing there. They are still a property of army.*** For that reason all the case was handed to the Ministry of Defence, whence it was handed to Military History Institute subsequently.

New civil code (89/2012 Coll.)

We return again to the principle Superficies Solo Cedit (424 of the Civil Code) in the prepared codification of the civil law x it will be fully valid only in the case that the person is identical.

The problem – there exist a different ownership of the construction and the plot of land:
Temporary institutions were inspired by the German regulation /the updating of the introductory law BGB upon the unification of Germany/ - the legal first option to the owner of the land to build up there, and the legal first option to the owner of the construction to buy the land, eventually its part /if it is possible to divide functionally/
If the construction is not registered in the real estate register (cadastre), the purchaser of the land can suppose in good faith (bona fide) that assumes a right to the land and construction
x the present owner of the construction has to be compensated by the alienor.
If the construction is situated on more plots of land, the above mentioned approach is valid only for the plot of land where the main part of the construction is situated, and the regulation about additional (annex) constructions on the other plots of land is applied.

Thank You for your attention

Pavel Salák jr.

Pictures:
www.wikipedia.cz
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