PROPERTY RIGHT ACQUISITION FROM AN UNENTITLED PERSON IN THE NEW CZECH CIVIL CODE

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Abstract

This article deals with the issue of property right acquisition from an unentitled person. It is in fact a breach of fundamental legal principle "nemo plus iuris ad alium transferre potest quam ipse habet". Currently there is a great difference between decision practice of the Supreme Court of the Czech Republic on one side and decision practice of the Constitutional Court of the Czech republic on the other side. Whereas the Supreme Court of the Czech Republic insists on abovementioned traditional principle, the Constitutional Court of the Czech Republic allows breaching of this principle giving preference to a good faith of the acquirer. The new Czech Civil Code favors the conclusions of the Constitutional Court of the Czech Republic.

Keywords: property right; ownership; acquisition; good faith; unentitled person;
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Preface

The Czech civil law has undergone a significant change as a result of adopting a new civil code. It concerns Act No. 89/2012 Coll. which had become valid on January 1, 2013 and consecutively effective on January 1, 2014. The new civil code is ground breaking in many aspects, such as that it excises dualism in private law, newly defines property law, strengthens the right to damages compensation in the area of non-asset damages, significantly modifies heritage law and even changes the conception of some of the civil law principles. It, for instance, returns to the superficial principle, when from the efficiency of Act No. 141/1950 Coll. (the so-called middle civil code) there was valid in Czech lands the *superficies non solo cedit* principle. There is also a change of perception of one of the fundamental principles of the private law which is represented by the principle *nemo plus iuris ad alium transferre potest quam ipse habet*[1] (hereinafter only as *nemo plus iuris)*. The following treatise will be devoted to this subject.

To the principle in general

The principle *nemo plus iuris* is usually attributed to Ulpian (D 50, 17, 54) and sometimes the authorship is also ascribed to Paulus. It is interpreted such that „nobody can transfer to another more rights than he possesses", or „a transfer of a right that the transferor does not possess cannot be valid". This rule is simultaneously also one of the principles of private law, which had not been challenged for centuries and has remained in place from the Roman days until the present. In other words, this principle suited the agrarian Roman society as well as the technical society of today, which best proves its universality. However, as a result of social developments, cracks begin to appear.

[1] Petr, B. (2012): Zásada „nemo plus iuris ad alium transferre potest quam ipse habet" a problematika nabývání od nevlastníka. Právní rozhledy. No. 20. 695 et seq. p., ISSN 1210-6410.

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European civil codices allow for exceptions to this principle relatively often as a kind of a toll for especially the functionality of market economy and preservation of good faith of an honest acquirer. On one hand, there is the principle of protection of the property right of the original owner (in case of Czech, Article 11 of the Charter of Fundamental Rights and Basic Freedoms) against which stands the principle of protection of good faith of the honest acquirer, as an expression of elementary requisite of certainty in private legal relations (Article 1 paragraph 1 of the Constitution of the Czech Republic).

The conclusions of the first codification commission to the German civil code address this question (in relation to movables) in an interesting way (BGB, end of 19th cent.): *The owner can sufficiently defend himself against the transfer of things by an unentitled person (except for misappropriation cases) by not letting go of the thing and thus eliminating the perception of third persons that the thing belongs to another. The acquirer by contrast does not have a way to make sure of the license of the transferor by necessary means. The higher portion of the blame for the error of the acquirer regarding the ownership of the transferor thus usually lays upon the actual owner; it thus seems fairer if he is to be put in a less advantageous position.*[2]

The German, the Austrian, and the Swiss legal order – albeit each in a slightly different way – break the *nemo plus iuris transferre potest, quam ipse habet* principle for the benefit of safer legal interaction (legal certainty). The stated end can clearly be seen in the adjustment in Section 367 ABGB (it protects the acquirer in public auction and acquirer from the businessman as part of his business operation, that is, in a situation when transfer of things usually takes place and the highest interest is put on the safety of legal interaction). Regarding things acquired from he to whom the owner entrusted the thing, the idea of risk distribution quoted in the previous paragraph is applied – the owner has more options to insure against the holder selling the thing „under his nose" in comparison with the limited options of the acquirer to find out that the thing does not belong to the transferor. The German BGB then achieves a similar result in a reverse way – it prescribes acquisition of real estate from a non-owner as a general rule that it breaks when regarding things stolen or lost.

A crucial condition of acquisition from a non-owner is always the good faith of the acquirer. Whoever had known, or at least had a reasonable doubt, about the entitlement of his predecessor to transfer the thing, is not worthy of protection.

A special regulation of acquisition from a non-owner is, in all these three countries, enjoyed by the real estate. Here it is possible to rely upon properly kept public records – land registries, which anyone can look up and thus verify the ownership titles to the land. Protected are those who have relied on the registry records. An interesting opinion on this is expressed by Kohler in the Munich commentary on BGB: Without Section 892 (anchoring the principle of material publicity of the land registry) would the authority of the state-governed body be threatened and the land registries discredited. Also the expenses allocated for keeping land registries would be difficult to justify.[3] In Germany the principle of the land registries publicity goes so far as the faith in them is excluded only by an actual knowledge of the acquirer of a conflict of the entry with reality.

The material publicity principle of land registries is balanced in all the countries by the right of a person damaged by improper entry in the land registry to demand rectification upon the registered owner. The entry in the land registry of the conflicting record in itself already

[2]Working translation, MüKo vol. 6, § 932 marg. no. 2.
[3]Working translation, Kohler, MüKo vol. 6, § 892 marg. no. 2, in reference to judgment RGZ 117,257.

excludes good faith of the acquirer. The legal regulation thus burdens the person who leaves without notice incorrect records in land registries, affecting his real rights.

In comparison with the Czech legal regulation, the law in German-speaking countries protects good-minded acquirers considerably more efficiently. The Czech law knows acquisition from a non-owner only in cases of acquisition in a commercial purchase contract (which however applies only to movables and contacts concluded among businessmen, so the consumer is, paradoxically, protected less during the acquisition than other businessman - Section 446 of Commercial Code), during the acquisition from an unentitled heir (Section 486 of Civil Code), whose inheritance had been confirmed, in case of materialized securities (Section 20 of Act No. 591/1992 Coll., on securities) and at public auctions (Section 30 and Section 53 of Act No. 20/2000 Coll., on public auctions, Section 329 par. 7 and Section 336l of Civil Procedure Code – in Czech law, however, the acquisition at an auction is always construed as original[4]). Czech owner is thus protected only in circumscribed instances and ownership acquisition is to a certain degree „a game of chance".

Moreover, there is also the excessive use of sanction of absolute invalidity by Czech legislators who use the sanction of absolute invalidity to persecute a number of legal acts where this sanction does not help even those who shall be protected by this sanction.[5]

The acquirer of property (if we do not consider the Constitutional Court judgment Ref. No. 165/11 mentioned below) cannot rely on the state listed in the land registry. If he wants to lessen the risk he must examine all the dispositions of the real estate in the past ten years (and also the legal reason of acquirement of the owner who had held the thing ten years ago in respect to whether he was in consideration of all circumstances in good faith, and so there could begin for him the acquisitive prescription period according to Section 134 par. 1 of Civil Code). The described state of legal uncertainty nevertheless brings significant legal risks, increases transactional costs of the contract parties and creates complicated conflicts among the members of the chain of acquirers about return of purchase prices on the basis of invalid purchase contracts.

Legal regulation in the old Civil Code Act No. 40/1964 Coll.

The *nemo plus iuris* principle had been inferred during the validity of the civil code from 1964 from Section 123, when only the owner of a thing was allowed the right to transfer the thing. This conclusion was not challenged even by commentary literature[6]. The judicature for example inferred that the entitled possessor cannot transfer proprietorship as only the owner can do so. The Czech private law used to admit exceptions from the rule only where it was explicitly prescribed by the law, something that is again confirmed by the commentary literature[7].
The civil code from 1964 adjusted the ways of acquiring law of property in Section 132, however it did not explicitly mention acquisition from a non-owner. Despite this, both theory and practice included this way of acquisition among property acquisition based on other actualities established by law, that is, among original ways of acquiring ownership.

[4]Compare the Supreme Court of the Czech Republic judgment from March 23, 2011, Ref. No. 21 Cdo 1032/2010.
[5]Compare judgment justifications of the Supreme Court of the Czech Republic decision from Feb 08, 2012, Ref. No. 31 Cdo 3986/2009, published under no. 67/2012 Collection of Judicial Decisions and Standpoints.
[6]Fiala, J., Kindl, M. (2009): Občanský zákoník: Komentář. Praha, Wolters Kluwer, 904 p., ISBN 978-80-7357-395-9.
[7]see, e.g. Švestka, J. et al. (2008): Občanský zákoník: Komentář. 2. vydání. Praha, C.H. Beck., Volume I. 1236 p., ISBN 978-80-7400-004-1.

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As far as the civil law area was concerned, it was a case of acquisition from an unentitled heir (Section 486 of Civil Code 1964), sale of uncollected thing by a contractor (Section 656 of Civil Code 1964), sale of uncollected article pursuant to Section 773 of Civil Code 1964, acquisition of an auctioned thing up to the day of closing the auction by paying the highest bid in an involuntary auction as part of judgment execution by sale of a movable thing pursuant to Section 329 par. 7 of Code of Civil Procedure, acquisition of a thing at a public auction pursuant to Section 30 or Section 53 of Act. No. 26/2000 Coll., on Public Auctions, acquisition of a thing from non-owner after a ruling of a court of 1st instance or the 2nd instance, that were in opposition with material law, and during the interim period before the decision of the Supreme Court pursuant to Section 243d par. 2 of Code of Civil Procedure.

As we stated in the beginning, private law is at the present time unified and the Commercial Code is practically abolished by Act No. 89/2012 Coll. During the validity of the Commercial Code (Act No. 513/1992 Coll.) the exceptions to the rule were represented by cases of acquisition of goods from a non-owner based on a purchase agreement concluded in accordance with Section 446 of Commercial Code, acquisition of property in opposition with Section 196a par. 1 to 3 of Commercial Code, acquisition from a non-owner according to Section 196a par. 6 of Commercial Code., acquisition of movable assets that are a part of a company or its part from a non-owner according to Section 483 par. 3 of Commercial Code, acquisition of a subject of contract for work from a non-owner according to Section 554 par. 5 of Commercial Code, acquisition of securities from a non-owner pursuant to Section 20 of Act No. 591/1992 Coll., on Securities, acquisition of an investment tool from a non-owner pursuant to Section 96 par. 3 of Act No. 256/2004 Coll., on Capital Market Trading and securities acquisition pursuant to Article I, Section 16 par. 2 of Act No. 191/1950 Coll., on Securities and Checks.

The aforementioned examples of acquisition from a non-owner used to represent legal exceptions so they, after all, did not present more significant problems neither in theory nor in practice. The opposite, however, is presented by cases in which a party withdraws from contract and this has an impact on third party, acquirer in good faith, or similarly in case of a consecutive establishment of absolute invalidity of the contract.

The principle in the judicature of Czech courts during the effectiveness of Act No. 40/1964 Coll.

The discussion about acquisition from non-owner as a major legal and social problem was also initiated by the judicature reflecting the social need. In the judgment of the Constitutional Court of the Czech Republic, Ref. No. II. ÚS 165/11, from May 11, 2011, it was stated that where „the principle of protection of good faith of a new acquirer acts against the principle of protection of the law of property of the original owner, there must be found a practical concordance between both of the conflictingly acting principles so that the maximum of both remains preserved and, if that is not possible, then so that the result shall be compatible with a general view of justice.

The persons who benefit from good faith thus do not bear any part of the responsibility for non-validity of a contract made between legal predecessors and considering their good faith could have in the interim period in no small way devalued the incriminated real estate. A person who has performed a certain legal deed with faith in a certain factual state, not presented to them by the other party, moreover confirmed by the data from a public, state-governed register, must be protected in a material legal state“.

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It is possible to understand the good faith principle as one of the key expressions of principles of legal certainty, which can be deduced from normative principle of legal state (Article 1 par. 1 of the Constitution). In contrast, the Supreme Court of the Czech Republic in its ruling from Sep 26, 2012 Ref. No. 30 Cdo 1587/2011, and similarly in the judgment from Oct10, 2013 Ref. No. 30 Cdo 2433/2013 holds that good faith of acquirers at conclusion of purchase agreements is meaningless regarding the principle that nobody can transfer more rights that he possesses. According to the opinion of general courts it is considered that in case of one invalid transfer all successive transfers are also invalid. However, the Constitutional Court of the Czech Republic contrasts these judgments with the Judgment from Nov 20, 2013 Ref. No. IV. ÚS 4684/12 expressing that the above-mentioned interpretation was overcome by former judgments (Ref. No. I. ÚS 143/07 from Feb 25, 2009, Ref. No. II. ÚS 165/11 from May 11, 2011, Ref. No. I. ÚS 3061/11 from Aug 13, 2012, Ref. No. I. ÚS 3314/11 from Oct 2, 2012, Ref. No. II. ÚS 800/12 from Nov 28, 2012 and Ref. No. IV. ÚS 4905/12 from Jul 10, 2013. In the quoted judgments it was stated that if there is a confrontation of two principles such as protection of good faith of a new acquirer or protection of proprietary right of former owner it is necessary to find a practical concordance between those principles so the result could be comparable to the general view of justice. In a material legal state it is not possible a priori without detailed evaluation of concrete circumstances of a case to deprive of protection somebody acting with confidence in a certain state confirmed by figures listed in a public state-organized evidence.

The Supreme Court of the Czech Republic R 56/2010 stated that "the judgment of the plenum of the Constitutional Court from October 16, 2007, Ref. No. Pl. ÚS 78/06 is determining for further proceeding of general courts in similar cases. The plenum ruling is superior to decisions of three-member panels of the Constitutional Court and it does not contain such radical concept of the good faith principle. Therefore there is no reason why it should be necessary to deviate from this legal opinion, especially when there is no clear and stable argumentation, based on supporting reasons from the perspective of judicial opinion, leading to the conclusion that even as a result of absolutely invalid contract of real estate transfer the property right acquisition can be secured if the "acquirer" is in good faith and, in this case, the legal regulation of the (un)entitled possession of the thing (judgment of the Supreme Court from Feb 2, 2011, Ref. No. 30 Cdo 4718/2010) or acquisitive prescription become obsolete."

In theory Fiala J., Knap V., Tégl P. jointly state that generally there exists no protection of a fair acquirer and the institution of acquisition from a non-owner is excluded from the civil law. [8]

The judgment of the Supreme Court from June 1, 2011 Ref. No. 30 Cdo 1523/2011 convenes to this opinion: „It cannot be concluded that the person who acted in good faith is entitled to acquire property right from a non-owner".

From a comparative point of view we must mention a judgment of the Constitutional Court of the Slovak Republic, Ref. No. I.ÚS 50/2010, from February 10, 2010, which also dealt with the difference between withdrawing from contract and absolute invalidity of the first contract in the sense of the judgment of the Czech Constitutional Court Ref. No. Pl. ÚS 78/06, and stated:

[8]Tégl, P. (2007): Ochrana poctivého nabyvatele při nabývání vlastnického práva od nevlastníka k movitým věcem nezapsaným ve veřejných seznamech. Ad Notam. No. 2. 48 et seq. p., ISSN 1211-0558; Tégl, P. (2009): Některé teoretické problémy nabývání od neoprávněného. Právní rozhledy. No. 10. 343 et seq. p., ISSN 1210-6410.

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Neither from the statement nor from justification of this judgment there can be inferred that these results could also be analogously applied to situations where the contract of ownership transfer is already invalid. Invalidity of the original contract of ownership transfer, considering the derivative way of acquiring of ownership right, cannot be revalidated even by the consecutive transfer of the thing to another „assumed owner", which is a manifestation of the already mentioned rule according to which nobody can transfer to another more rights than what he already possesses.

Principle and the new Civil Code Act No. 89/2012 Coll.

In the new civil code the protection of good faith in the record in a public register, mainly in a land register, is strengthened. This implies the possibility of property acquisition from the unentitled person (non-owner). As it has been said many times, the new legal regulation is universal for all private relationships. The acquisition from a non-owner is classified as an original type of property right acquisition (see the explanatory memorandum to Section 1109 of Civil Code). In Sections 1109 – 1113 of Civil Code the cases of property right acquisition from the unentitled person are specified. Similar to the previous legal regulation, mainly to cases regulated in the repealed Commercial Code, it concerns cases in which the acquisition of things unlisted in public registers is realized in good faith on the basis of proper title in a public auction, from a businessman within a normal business relations, for a fee from somebody who was entrusted with the thing by its owner, from the unentitled heir, whose inheritance has been officially confirmed, during a business with an investment instrument, commercial instrument, and bearer documents, or during a business realized at the commodity exchange. Because these so-called privileged manners of property right acquisition from the unentitled person do not bring anything new into the area compared to the former regulation, we will concentrate on the issue that still gives rise to emotions that is, the property right acquisition in case of good faith into the public register – and old dispute over whether the original acquirer should be preferred over acquirer in good faith who has acquired the property right as a third person, or vice versa. So what is just?

Before we begin to deal with these issues that in practice only relate to real estate, we should briefly mention the area of things that are not recorded into the public registers according to the Czech legislation. By public register we mean a register accessible to anybody without any special certificate. Things not registered, usually movables, are nowadays acquired from the unentitled person only at the moment of contract conclusion without any need for tradition (it is based on consensual principle, the doctrine of title and modus has been abandoned). The question is how to compensate the good faith of the acquirer if there is no possession. The Civil Code brings a different concept of a thing in a legal sense saying that under the concept of a *thing* there should also be understood immaterial things (Section 496 par. 2 saying: "Intangible things are rights whose character admits this, and also other things without material substance). All indicates that the receivables will be also considered to be immaterial things (at least the explanatory memorandum states so).
To this corresponds the definition of the subject of proprietary right in Section 1011 of Civil Code: "All that belongs to somebody including things material and immaterial are his property." On the other hand, in Section 988 art. 1 of Civil Code it is written "it is possible to hold the right that is possible to transfer to somebody else and that allows for permanent or repetitive performance." This is typical of burdens, however, it can hardly be applied to receivables, which are traditionally understood as a claim arising from an obligation relation. There are

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opinions[9] that the new civil code is applicable on the acquisition from the unentitled person also in cases of ownership interest transfer, origin of tenancy or receivables assignment. The protection of good faith also has to be related to the transfer of immaterial things and rights where the possession acquisition is abandoned. On the other hand the good faith is emphasized and defined by the new civil code for example in Section 992 par. 1 of Civil Code as a requisite of honest possession: "he who, based on a convincing assumption, believes that he has a right which he executes, is the rightful holder. An unrightful holder is he, who knows, or it must be obvious to him based on circumstances, that he is performing a right that does not belong to him." In the definition we find both the reason on which good faith is based and the circumstances from which honesty or dishonesty can be inferred. Thus, in practice, the concept of good faith is no different from the previous one and there will also probably be a judicature applicable related to good faith. Furthermore, in Section 7 of Civil Code the honesty of acting and good faith of the acquirer is presumed which strengthens the probative position of the acquirer and shifts the burden of proof to the person who had lost the thing. The good faith is examined at the time when the relevant action takes place. If, however, if the real right originates only at the time of public record entry, then at the moment of filing of the proposal for the entry at the register (Section 984 par. 1 second sentence of Civil Code).

In principle pursuant to the new civil code it applies in case of the movables acquisition from the unentitled person that the acquirer must prove his good faith in the right of the transferor to transfer the property right (Section 111 of Civil Code). This does not apply in cases when the owner proves that he has lost the thing or it has been stolen.

Now we get to the most important issue which concerns the things recorded in public registers and the possibility of their acquisition from the unentitled person. Practically it is the problem of the real estates registered in land register (from Jan1, 2014 there is also a new cadastral act, Act No. 256/2013 Coll.) In other words it is about the material publicity of the record in the land register that is formally enforced by Section 980 of Civil Code. Also here it states a disprovable assumption of rightfulness of the record, or that the right to the thing in the public register is recorded in correspondence with the actual legal state.

In Section 984 it is stated that if the state recorded in public register is not in accordance with the real legal state, the registered state is in favor of the person who acquired real rights for price in good faith that the transferor is entitled to do so according to the registered state. The principle *nemo plus iuris* is markedly diminished. The real owners must watch their rights in accordance with the principle *vigilantibus iura scripta sunt* reflecting for instance in Section 985 of Civil Code. This gives the possibility of the protection of the person whose real right is affected by the fact that the registered state in public register is not in accordance with the actual legal state, and the person is entitled to call for remotion of the discrepancy. In case he proves that he has exerted his right, he can ask for the record of this fact in land register.
The decision issued about his real right affects against the person whose right was recorded in the public register after the moment when the relevant person has asked for the inscription.

Everyone has the possibility to enforce deletion of such a record that has been realized without any legal title in a favor of somebody else and that violated his rights (Section 986 of Civil Code). He can demand deletion of such record and ask for the notice of this reality. The office responsible for the public register will delete this notice of discrepancy in case the claimant will not prove within two-month period that he has filed the claim at a court of justice. If the claimant

[9]Vaněk, J. (2014): Nabytí vlastnického práva od neoprávněného podle nového občanského zákoníku. Právní rozhledy. No 2. 44 et seq. p., ISSN 1210-6410.

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exercises the notice of discrepancy within one month from the day he has got aware of this fact, his right can be exercised against anybody to whom the controverted record is in favor or to the person who acquired such real estate based on the record. After this period the claimant is entitled to enforce it only against the person who has reached such a record without being in good faith. If the claimant was not informed the period is extended to three years. The period starts on the day when the record was realized.

To the above stated it is necessary to mention that new cadastral act imposes to the cadastral office new duties in relation to the former owner. The cadastral office shall inform the former owner that the record proceeding has been initiated. The record cannot be realized within the first twenty days.

The new civil code does open the way to the reinforcement of rights of an acquirer in a good faith. In other words, it strengthens the principle of material publicity in a record in a public register, such as land register but simultaneously protecting the right of former owner.

The interpretation of temporary sections of the new civil code, e.g. Section 3030 may be problematic. In this section, it is said that rights and duties regulated by the former regulation are also regulated through the sections of the first Chapter of the new civil code. This chapter states that only the act can prescribe how the property right originates and expires that is protected. This would support the existing opinion of the Supreme Court of the Czech Republic that without needed sections of the civil code (judgment of the Supreme Court of the Czech Republic from Oct 23, 2013 Ref. No. 30 Cdo 2433/2013) the acquisition from a non-owner cannot be educed in case of absolutely invalid contracts. Another argument of opponents of the acquisition of the non-owner is the reference to the sections regulating acquisitive prescription (the new civil code also knows an extraordinary acquisitive prescription in double periods) which would become groundless.

The solution of the problem established in the Judgment of the Constitutional Court of the Czech Republic Ref. No. 165/2011 within the new civil code has become closer to the standard modern solution as it is known from the German and the Swiss (and probably also the Austrian) law. Nowadays the case should be solved as it was established in the Judgment of the Constitutional Court of the Czech Republic Ref. No. 165/2011. In this case the claimant would have been the third acquirer in time who has bought real estate from a person recorded in the land registry as the owner, without being aware that real estate got to him via invalid legal act. According to Section 892 BGB, this by itself would be sufficient for property right acquisition, and the original owner would have, according to Section 816 par. 1 BGB, at the most the right to surrender of the purchase price against the transferor. According to Section 973 ZGB (and probably also Section 1500 ABGB used analogously) it would further be necessary to examine good faith of the acquirer.

According to the German law, the invalidity of legal act (for circumvention of prohibition of forfeited collateral) would, besides, apply only to obligational contract (which in fact was an agreement about a collateral transfer of a right), and not to real right contract of ownership transfer which would thus remain valid (and the original owner could demand return of the thing only from the title of unreasonable enrichment from invalid contract). So in reality the regulation of Section 892 BGB would not be at all necessary to apply.

Summary

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The new civil code (see Section 984) will obviously be interpreted (according to the standpoint of civil college of the Supreme Court from Feb 2, 2014 to the process of the courts in cases of issuing constitutive rulings in area of real rights, proposed already in 2013 and before, if there has been no ruling in legal force, so that from Jan 1, 2014, among the conditions of material publicity of public register in favor of an acquirer from a non-owner there will be:

1. Contradiction between actual legal state and registered state recorded in public register
2. The property acquisition was realized on the basis of legal action
3. The legal action was performed for a fee
4. The right has been acquired in a good faith
5. The right has been acquired from a person registered in a public register
6. It will not be the legal exception regulated by Section 984 art. 2
7. The real owner does not enforce his right in a way and periods pursuant to Section 985 or 986[10]

This means that acquisition from a non-owner will still be an exception from the general principle *nemo plus iuris*, that the Czech courts will literally have to fight through their judicature, even in cases where the good faith has been blatantly trampled by the acquirer fulfilling the above-mentioned conditions.

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[10]See Spáčil, J. et al. (2013): Občanský zákoník III. Věcná práva (§ 976 – 1474). Komentář. 1. vydání. Praha, C.H. Beck, Vol. III. 36 et seq. p., ISBN 978-80-7400-499-5.

10. Working translation, MüKo vol. 6, § 932 marg. no. 2.
11. Working translation, Kohler, MüKo vol. 6, § 892 marg. no. 2, in reference to judgment RGZ 117,257.

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