



Rights and Obligations of Urbexers in the Context of the Legislation of the Czech Republic

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Abstract

Urban Exploration (URBEX) is an experiential exploration of abandoned and disused buildings and sites, so-called brownfields, with the aim of visually registering one's presence there, and at the same time experiencing the sensation of knowing something illicit and dangerous. Urbexer is well aware that his actions violate the law when entering someone else's often structurally disturbed and waste-laden property, often in a non-standard way and despite a clear prohibition. Given the increasing intensity of URBEX and its popularity among individuals and groups, it is necessary to identify the legal aspects of this conduct. The intention of this paper is to define, within the framework of Czech legal norms, the rights and obligations of the urbexer-explorer, a person who performs Urban Exploration as a voluntary, leisure activity, which, however, is associated with a number of risks and limitations.

Keywords

URBEX, Urban Exploration, Law, Czech Republic, Brownfield, Urbexer, Explorer

I. Introduction

Urbex and urbexer are relatively new terms associated with leisure activity, the purpose of which is the active exploration of abandoned and unused properties, the so-called (unregenerated, original) brownfields (Turečková et al., 2021) or other remains of human activity. Here we mean, for example, the inspection of shipwrecks, train or aircraft wrecks, decommissioned and no longer functional agricultural machinery etc.). Urbex represents urban exploration or exploration of modern ruins and includes a targeted survey or visit to any site or object that has been created by human activity, which does not currently

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perform any economic function and which is located not only in a settlement – urban area, but also in the countryside and in a compact undeveloped area (rurex, rural exploration). The purpose of urbex is primarily to gain an intense experience from one's own stay in an unusual place, to have a personal unusual experience. In addition, the urbexer usually carries out exploration this research in order to visually document these places in the form of photography or short video recordings, while at the same time wanting to experience a sense of adventure from visiting these unique spaces and locations. The fact remains that quite common these are to properties owned by others, mostly off-limits and not freely accessible, where there is a potential risk of injury or damage to health and property. The aim of this article is to define the rights and obligations of these explorers – urbexers in the context of Czech legislation and to analyse the ways of their behaviour during the implementation of urbex within the framework of legal norms. The side of the property owner, which is represented by the object of the urbex, is not determined here and is the subject of another study. The treatment of this topic in the context of Czech law is quite new and the definition of urbex and the role of urbexers within the normative limits of the laws of the Czech Republic can be considered as a basic requirement for their professional description. The objective urgency of the treatment of this issue is all the greater because it is a phenomenon whose significance is reflected in the growing interest of a part of the public in urbex as such and which is reinforced by the promotion of urbex on social networks and in other media, as well as the development of technology and the social trend strengthening individualisation and non-uniformity.

The methodological framework of this purely descriptive text is defined primarily by a search of Czech legislative sources and standards in the form of laws and decrees and their factual analysis in combination with thematically relevant information on the issue of urbex, especially in relation to the behaviour and actions of urbexers. A number of findings are also based on the authors' own scientific research and professional experience, here mainly in the field of legal and judicial practice. Both deductive and inductive approaches have been reflected in the elaboration of the text of this article, with the key being the synthesis of partial findings formulated in the conclusion having elements of generalized statements and assertions.

II. Urbexer, Active Brownfield Explorer

An Urbexer, an urban explorer, is a private individual who purposely seeks out abandoned and disused properties and locations in order to discover and explore "hidden" places, experience adventure and excitement and visually capture the atmosphere of these authentic locations through photography or video. Urbexer performs urbexing in their free time and it is a leisure, individualised and voluntary activity, which is the counterpart of organised exploration of tourist attractions (also Hughes, 1995). Brownfields are formed after civic amenities and as a remnant of industrial, agricultural, residential, military, administrative, mining, transportation or other activities (Turečková, 2022 or Sucháček, 2019). Typical brownfields that are in the focus of attention of researchers are non-functioning hotels and hostels, shops and restaurants, agricultural cooperatives and estates, factories and warehouses, chateaux and mansions (more e.g. Turečková, 2023), monasteries, residential

houses and villas or schools, cinemas, theatres, sanatoriums and health centres, bath houses and hospitals. Less common in the exploration of abandoned properties are vacant building sites, docks, tunnels, sewers and drains, water tanks or chimneys, waterworks, railways, mine buildings or mines, cellars, hangars, parsonages, crematoria, churches or cemeteries, amusement parks, playgrounds or swimming pools, bowling alleys, forgotten gardens and greenhouses, mills, bridge structures, bunkers, barracks, shooting ranges etc. (also e.g. Ninjalicious, 2005). Urbex can also apply to objects that are not directly properties but are the result of human activity, such as the inspection of forgotten car wrecks, old disused trains, ships or planes etc. as mentioned above in the Introduction.

Urbex has become more and more popular in recent years (also Rosa, 2013) and this is not only due to the increase in individualisation and anti-conformity, but also related to the development of modern technology that allows not only the precise location of sites and movement in the field, but also taking and sharing photos or videos, urbex tips, experience and knowledge. The attractiveness of urbex also lies in the fact that objects and sites suitable for exploration can be found almost everywhere and it is not necessary to travel far to find them.

Urbexers are intrinsically drawn to the excitement and adrenaline rush that comes with exploring brownfields and overcoming barriers. Firstly, it is because they are aware that this behaviour is illegal (illegal infiltration) and dangerous (also Steiner and Reisinger, 2006), and at the same time they seek the thrill that comes from the uncertainty of what or who they might meet on the property. Thus, it is a combination of feelings that is hard to find in other activities. The motivation for the implementation of urbex may also be the actual interest of some explorers in culture and history and its documentation, which is in many cases connected with the objects. In some cases, urbexers can use brownfield surveys as a way to draw attention to socially undesirable urban decay of the built-up area, the unintended neglect of historic buildings and loss of cultural heritage, or concerns about potential environmental damage (e.g. in the case of illegal dumps etc.). It should be added that urbexers often take the risk of visiting brownfield sites consciously, where they are logically aware of the structurally unstable or dilapidated state of the properties under investigation. One can also expect the existence of broken glass, construction debris, rubbish, loose footings, major illegal dumps or the presence of insects, rodents and other small mammals etc. at these properties (Turečková, 2023). Hidden threats may include contamination of properties with chemicals and/or other toxic substances and moulds, the building structures themselves may contain asbestos or lead paint etc. All of this can put urbexers at risk medically and cause them physical injury. On the other hand, urbexers who do not respect the unwritten rules of urbex, here in the sense of “leave nothing but footprints” (Ninjalicious, 2005), may be potential polluters of the sites. In this case, it is not a true urbexer, but a so-called pseudourbexer (for these group of people is characteristic “brag” about their exploration on social media, blogs, YouTube channels etc., where they share the location and/or benefit financially from this activity. There is also the possibility that the (pseudo)urbexer, by his inappropriate behaviour in the property, may accelerate or exacerbate further devastation of the property (e.g. forgetting to close the door behind them) or knowingly or unintentionally damage the property and equipment of the property

under investigation (see also Merrill, 2014 or Stonington, 2014). In this context, we may also encounter cases where surveyors attempt to “force” entry to a property if it is not secured at the entrance, even though this behaviour is contrary to the ethical standards of the urbex. The (pseudo)urbexer thus becomes at the same time a vandal.

As mentioned above, urbexers primarily photodocument these sites because they are unique and visually interesting places that often have mysterious, dramatic or eerie atmosphere (Paiva and Manuagh, 2008; George, 2011), specific lighting effects, genius loci or other peculiarities. Many photographs are artistically processed. Coupled with this is the public presentation of the visual record, most often on the internet and social media, either individually or in sub-urbex groups in which explorers come together to display their photographs and at the same time share tips on urbex sites. In this case, it may seem problematic that with the development of creative technologies, a number of “sites” can be completely re-created or artificially altered, misleading others into thinking that they are real and authentic.

III. Rights and Obligations of Urbexers From the Perspective of Czech Legislation

Section 63 (para.2) of Act No. 114/1992 Coll., on the Protection of Nature and Landscape (hereinafter referred to as the “Act on the Protection of Nature and Landscape”) states that everyone has the right to free passage through the landscape. Everyone has the right to free passage over land owned or leased by the state, a municipality or another legal person, provided that this does not cause damage to the property or health of another person and does not interfere with personal protection rights or neighbouring rights. In doing so, they are obliged to respect other legitimate interests of the owner or leaseholder of the land and generally binding legal regulations.

You can freely enter land owned or leased by the state, municipality or other legal entity. However, built-up or construction land, yards, gardens, orchards, vineyards, hop gardens and land intended for animal farming are excluded from free passage. Arable land, meadows and pastures are excluded from the authorisation at a time when the vegetation or soil may be damaged or when livestock are grazing (Section 63 (para. 3) of the Nature and Landscape Protection Act). Information on the type of land and whether the land is owned by a natural or legal person can be found in the Land Registry. However, if we are on a trip, it is difficult to find out who owns a field or meadow. Private owners who are bothered by tourists will usually fence it off or put up information signs (e.g. “No access to private meadow”). In this case, we do not enter the land (Pernica and Blažek, 2023). Section 63 of the Nature and Landscape Protection Act is only a supplement to Article 14 (para. 1) of the Charter of Fundamental Rights and Freedoms, which guarantees freedom of movement and residence (Constitutional Act No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms, as amended).

By trespassing on someone else’s land, the urbexer unlawfully interferes with the owner’s property rights. The owner has the right to protection of his property rights (specifically applicable to the case of trespassing) according to Section 1042 of the Civil Code: “The owner may seek protection against anyone who unjustly interferes with or disturbs his property rights other than by withholding the thing from him.” Under Section 1042 of

the Civil Code, the owner of the property may bring a negatory action (or what is known as a counterclaim). A negatory action may seek protection against interference with the owner's right consisting of interference other than the unlawful detention of his property. This may include, in particular, the unauthorised use of a road leading through the owner's land, trespassing or crossing over the owner's land, drawing water from the owner's well, landscaping, placing various objects on the owner's land, commencing construction on someone else's land etc. (Spáčil et al., 2013). In the case of urbex, this may constitute trespassing. Thus, a negative action can be brought to protect against encroachments that directly affect the owner's land and thereby interfere with their property rights (Supreme Court Resolution, 2020). It is irrelevant whether the interference with the property was caused by the wrongful act of the trespasser or whether any damage was caused by the act. Only the unjustified interference with the property right is decisive for the establishment of the claim (Petrov et al., 2019). A developer moving on the premises of abandoned buildings incurs liability arising from trespass. Trespassing is a wrongful act that creates a responsible legal relationship between two equal entities and also entails a liability obligation. The content of this relationship is property rights (regulated by law as absolute property rights in § 1011–§ 1114 of the Civil Code) and the corresponding obligation of all others not to interfere with the exercise of these rights. The object of this relationship is the object of ownership, i.e. the land (Harvánek et al., 2004). Civil liability is one of the most important institutes of private law and contributes significantly to strengthening respect and esteem for the law, as it plays an irreplaceable role in preventing, compensating and redeeming the harm caused in the property or non-property sphere of the injured party (Dvořák et al., 2013).

Urbexer, moving on the premises of abandoned buildings, who by his own fault violates the duty stipulated by law and interferes with the absolute right of the property owner, i.e. the victim, shall compensate the victim for what he has caused (§ 2910 of the Civil Code). A prerequisite for the obligation to compensate for damage is, in the first place:

- a) an unlawful act which interferes with the absolute right of another person,
- b) the causing of harm,
- c) a causal link between them,
- d) culpability (Petrov et al., 2019)⁴.

In some cases, however, entry onto the land is possible under the Civil Code. This is the case, for example, when a private person has an escaped animal that they can pursue on someone else's property. The owner must allow such a person to enter even if the private person has lost a movable object on his land and the owner is not willing to search for the object and give it to the person. When an animal or thing causes damage on the land, that person is, of course, liable for that damage. In certain situations, a neighbour is then allowed to enter the property. A neighbour is allowed to enter the adjoining land for the purpose of maintenance or management of their land. However, they may enter the land only at the time, to the extent and in the manner necessary. A neighbour who owns land that is not adequately connected to a public road may require the owner to allow them

⁴ The first three assumptions are of an objective nature, the fourth of a subjective nature (Šmíd, 2014).

a necessary passage across their land. However, the owner must provide compensation. If the owner does not agree to the necessary path, the neighbour can go to court (Pernica and Blažek, 2023). Under the Civil Code, the possibility of rightful access to someone else's land is also established by so-called easements (§ 1257–§ 1399 of the Civil Code), which establish only partial limitations on the property rights of one subject that serve to the benefit of another subject.

Furthermore, the authorized entry onto the other person's property applies to firefighters (according to Act No. 133/1985 Coll., the Act of the Czech National Council on Fire Protection), police (according to Act No. 273/2008 Coll., on the Police of the Czech Republic), persons providing public communication network including related electronic communication facilities (according to Act No. 127/2005 Coll., on electronic communications and on amendments to some related acts), employees of energy industries (according to Act No. 458/2000 Coll., on the conditions of doing business and on the exercise of state administration in the energy sectors and on amendments to certain acts), persons authorised to carry out surveying activities (pursuant to Act No. 200/1994 Coll., on surveying and on amendments and additions to certain acts related to its introduction), employees of basin administrators and authorised professional bodies (pursuant to Act No. 254/2001 Coll., on the Water Act and on amendments to certain acts (Water Act)), owners of water supply or sewerage systems (pursuant to Act No. 274/2001 Coll., on the Water Supply and Sewerage Act).

Trespassing means not only the actual entry, i.e. crossing the boundary of the property, but also staying on the property, limited by the purpose of entry (Supreme Court Order, 2016). The very fact that the urbexer is on the premises of abandoned buildings means accepting the risk that the buildings may not be in perfect condition (examples here include a ceiling being torn off, a staircase collapsing, a roof tile falling off, a window pane falling out). Thus, the urbexer should be aware of the risk that, even if he incurs damage within the meaning of the Civil Code, by the very nature of his activity as an urbexer – surveying abandoned buildings, he will bear his share of liability for this damage under Section 2918 of the Civil Code. However, from the point of view of the position of the urbexer as an injured party, it can be hypothesized that his liability will also be established; in full extent in a situation where the owner has taken all measures (against intrusion and marking of the danger arising from the building), to a limited extent the urbexer will also be liable in a situation where the owner fails to fulfil his obligations, namely that the urbexer has violated the general preventive duty to act in such a way as to avoid unjustified harm to the freedom, life, health or property of another, as expressed in Section 2900 of the Civil Code (Duda, Márton and Turečková, 2024).

If the criminal liability of the urbexer is considered in the light of the nature of his activity, which is the survey of abandoned buildings, the assessment of liability for the offence of violation of home liberty under Section 178 of the Criminal Code is proposed, which is committed in the state of facts by those who unlawfully enter or remain in the dwelling of another.

The Penal Code defines the term dwelling in the provisions of Section 133 as a house, flat or other premises used for living purposes and the accessories belonging thereto. There is no need to elaborate on the question of what is a house or a flat in respect of any other premises used for living purposes, this being all other premises used for living purposes which are not a house or a flat. These may be premises situated, for example, in a hotel, a hostel, a university dormitory, or a retirement home. Garden cottages used for temporary residence may also be considered as such other premises. On the basis of the above, it is safe to exclude criminal liability of an urbexer for entering buildings not used for residential purposes, e.g. industrial, agricultural and military buildings.

However, can his criminal liability be inferred for entering houses, flats or other premises that have been used for living purposes and are abandoned? The question here is what is the object of the offence in question. It is the protection of the freedom of the home guaranteed by Article 12 of the Charter of Fundamental Rights and Freedoms, which provides that the home is inviolable. It may not be entered without the consent of the occupant. On the one hand, the general imperative not to enter a building without the consent of its owner must be taken as a basis for criminal liability, but it is essential that the person lives in the premises intended for habitation, not only as the owner but also as a legitimate occupier such as a tenant, lodger or member of a shared household etc., who may be protected against the owner of the building itself. Even if the urbexer enters an abandoned building originally used for housing, he does not satisfy the object of the offence and his criminal liability will not be established. Historically, the Supreme Court has commented on this issue No.: Tpjf 33/79 of 11.02.1979 that the entry into an unoccupied dwelling, e.g. as a result of repairs, or into a vacant new building does not interfere with anyone's home liberty and therefore does not give rise to liability for the offence of violation of home liberty. It should be added that the building must be permanently unoccupied, not temporarily, e.g. due to a holiday, business trip, flood etc. It could be concluded that the opinion in question resolves the issue of the criminal liability of the urbexer, so that he would not be criminally liable in all circumstances. This proposition, however, can be successfully disputed with reference to the cases cited below, and at the outset, it is necessary to point out the age of the Supreme Court's opinion, which did not anticipate the present-day situations that might arise.

It is a well-known fact that the actual survey of abandoned buildings is a very dangerous activity, both with regard to their condition and the fact that they are usually occupied by people from the margins of society – squatters, homeless people and people from drug backgrounds. These persons will usually stay there without legal justification by occupying the building arbitrarily. The question therefore arises as to whether the urbexer can also interfere with the freedom of these persons. This question can be answered either by following the previous interpretation, starting from the premise that the building in which these persons are staying is no longer a place of residence and therefore the activities of the urbexer cannot logically interfere with the freedom of the home of these persons. Nor can those persons themselves interfere with the domestic liberty of others. Another aspect is the fact that those persons are not there lawfully, i.e. without a legal reason necessary for the use of the building.

However, it is possible to imagine a model situation where a homeless person, with the consent of the owner, will sleep in the building in exchange for, for example, guarding the building against “curious” people such as, for example, urbexers. This model situation can be further supported by the fact that Section 2236 (para. 1) of the Civil Code provides that a dwelling means a room or a set of rooms which form part of a house, constitute a living space and are intended and used for the purpose of living. If the landlord and the tenant agree that a space other than a dwelling shall be rented for occupation, the parties are bound in the same way as if a dwelling had been rented. Thus, if a non-habitable space, such as a garage or a derelict building, can be rented out as a dwelling, will the homeless person’s freedom of occupation be protected in the same way if, with the knowledge of the owner of the derelict building, the homeless person occupies it? In order to answer this question, it is necessary to look more closely at what the constitution-maker meant by “freedom of the home”. This is understood in a spatial sense. In general terms, it is a spatially understood sphere of life which the individual has acquired and if he has deprived it of general accessibility, it is not decisive where it is located or how it is equipped, as it falls within the material content of the commented right. It may be premises in immovable property as well as in movable property. It also does not matter whether the space is used permanently or temporarily by the person (dormitories, hostels, homes for the elderly, as well as hospital rooms or dormitories for the homeless, and in these collective hostels the definability of the private space that the individual has withdrawn from general accessibility will play a role). The ownership of the property or thing does not play a role, what matters is the legitimacy of the use of the thing.

It is therefore essential that the space occupied by the individual must be deprived of general accessibility, i.e. that it is not possible to enter it freely. For example, in the case of our homeless person, he would have to sleep in an abandoned building in a room that is lockable. This brings in another assumption, namely that it is relevant whether or not the room is secured against entry. If the urbexer enters an unsecured building or part of it, e.g. through a window or an opening in a wall, his criminal liability will be excluded because of the absence of an object-interest protected by the law, since the interior of the building is accessible to an unlimited number of persons. If he enters the secured building or part of it by overcoming an obstacle preventing entry, he will not only be liable for the offence in question but also under its qualifying offence because he committed it by breaking and entering. By placing a barrier preventing entry into an abandoned premises, a will is expressed to render the premises inaccessible and the owner or other person entitled in relation to the premises thereby protects the “domestic privacy” of the premises.

On the basis of the above, the following conclusions can be drawn, namely that in assessing the criminal liability of the urbexer for the offence of trespass to the home, it will be necessary to initially assess whether or not he entered the building freely. If he has entered the building freely, he will not in principle be criminally liable, because the premises itself is abandoned and not used for living purposes, and this applies in all cases (whether they are buildings originally intended for living purposes or other buildings); if he has entered the building using violence, typically, e.g. by breaking a window, kicking a door, breaking a lock, it will be necessary to distinguish whether or not the building is intended for

living purposes; if not, the maximum criminal liability may be incurred for damaging other people's property, otherwise, there is a potential for committing the crime of violation of home liberty in a qualified offence under Section 178 (para. 1) and (para. 2) of the Criminal Code.

This does not the end of the list of potential criminal liability of the urbexer, given that the urbexer can cause damage to the premises, typically by overcoming an obstacle (breaking into) the premises or by moving around in the premises. If the amount of the damage caused exceeds CZK 10,000 or more, liability for the offence of damage to foreign property can be inferred under Section 228 (para. 1) of the Criminal Code.

IV. Conclusion

The content of this article was to define, within the framework of the legal norms of the Czech Republic, the rights and obligations of urbexers, persons who purposefully enter and visit abandoned buildings, sites and other relics of human activities that are permanently unused and dilapidated. The presented topic is new in content and has not been dealt with by experts before. It is loosely related to author's text devoted to the other side – property owners (Duda, Márton and Turečková, 2024). URBEX represents an emerging leisure phenomenon and an alternative form of unconventional tourism. Given the trends in society, the popularity of URBEX can be expected to increase in the near future and therefore it is necessary to clearly define the rights and obligations of all parties involved (Duda, Márton and Turečková, 2024). This paper has focused on the analysis of the legal aspects of permissible URBEXER behaviour, for which the normative regulations of the Czech Republic apply. The legal aspects of URBEX from the point of view of URBEXERS are characterized in terms of civil law and criminal. Given the current growing interest in urbex activities, a factual sense for its publication can be identified in the analytical part of the text above. Knowledge of the facts of urbex violations can have, if not a directional, at least a mitigating effect.

To summarize the most important conclusions about the rights and obligations of urbexers in the Czech Republic, in the area of civil law, an urbexer moving in the premises of abandoned buildings who, through his own fault, violates a duty established by law and interferes with the absolute right of the property owner, i.e. the victim, shall compensate the victim for what he has caused (Section 2910 of the Civil Code). The urbexer should also be aware that, even if he suffers damage within the meaning of the Civil Code, by the very nature of his activity as an urbexer – surveying abandoned buildings – he will bear his share of liability for this damage under Section 2918 of the Civil Code. However, from the point of view of the position of the urbexer as an injured party, it can be hypothesized that his liability will also be established; in full extent in a situation where the owner has taken all measures (against intrusion and marking of the danger arising from the building), to a limited extent the urbexer will also be liable in a situation where the owner fails to fulfil his obligations, namely that the urbexer has violated the general preventive duty to act in such a way as to avoid unjustified harm to the freedom, life, health or property of another, as expressed in Section 2900 of the Civil Code (Duda, Márton and Turečková, 2024).

In the criminal-legal sphere, the offence of violation of the freedom of the home can most often be identified in the case of an urbexer, if the entrance to the property (the object of the urbex) is deprived of general accessibility, at least formally, but at the same time provided that the private sphere of the legitimate user of the building is protected by this closure, which fulfils the content of the freedom of the home. By overcoming the obstacle preventing entry into the building, the act will be committed simultaneously by burglary and therefore within the scope of the qualified offence of violation of home liberty under Article 178 (para. 1, para. 2) of the Criminal Code. Whether in the context of overcoming an obstacle or moving around the building, the urbexer may cause damage and thus also fulfil the criminal liability for the offence of damage to foreign property under section 228 of the Criminal Code.

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