

DIRECT REPRESENTATION IN CIVIL LAW - GENERAL REMARKS

Abstract

The subject of this theses are general remarks to direct representation as a historical and fundamental institute of private (substantive) law. The thesis is therefore devoted to the interpretation of general provisions of the Civil Code concerning direct representation (contained in Sections 436 to 440). These fundamental issues include, in particular, the nature of the direct representation, as an institute, and the authority to represent, as the power of one person to act for another. Furthermore, the author of this work concerns the distinction between different types of direct representation, the distinction between legal relationship between agent and principal concerning representation and the other potential legal relationship that may exist between those two, and the requirement to prove authority to represent to a third party. An extensive part of the thesis is devoted to the scope of the agent's authority to represent the principal and the consequences of acting without a such authority. This part includes issues related to acting with a conflict of interests, the personal acting of the agent and requirement of collective action of several agents.

The aim of this thesis is to interpret relevant legal provisions consistently and at the same time in a way that will not cause practical difficulties, but also obvious injustice. Emphasis is placed on a precise distinction between legal issues of representation and the rights and obligations of the representative, represented and possibly also third parties arising from their obligations or other legal relationship. According to the author, the legal provisions concerning direct representation should be interpreted as purely technical - solely as a question whether a person could act on behalf of another in a particular juridical act or what the consequences are for the juridical act itself when agent act without such authorization. At the same time, a number of simple examples are presented to demonstrate that the issues being addressed are not purely academic, but answering them is crucial for the correct solution of real life situations in which direct representation is exercised.

The thesis is divided into six chapters. The first chapter deals with the most general issues, namely the nature, types and origins and termination of direct representation. The second chapter is devoted to defining the scope of agent's authority to represent the principal as a key concept of direct representation. The third chapter deals with the attribution of good faith and other knowledge to the representative. The fourth chapter deals with the conflict between the interests, that is, the

description of situation when such conflict may occur and the consequences of such situation. The fifth chapter focuses on the personal acting of the representative, ie the possibility of substitution. The sixth chapter then concludes the substantive part of the these by interpretation of questions concerning the plurality of representatives. The short conclusion then summarizes the whole thesis.

Key words

The authority of a representative, conflict of interest, general part of civil law