

Donation mortis causa

Abstract

Inheritance law, in its broader concept donation mortis causa falls, is being referred to as the hearth of civil law since it interconnects both proprietary (contractual) and personal (family) aspects. Czech civil law recodification meant significant change of inheritance law legislation, including renaissance of wide range of legal institutions including donation mortis causa.

This thesis aims to comprehensively and critically assess legal regulation of donation mortis causa in the Czech Civil Code. The emphasis is primarily put on problematic aspects of this regulation. The submitted thesis endeavours to find answer to the question of practical usability of the donation mortis causa. Its author attempts to provide a reasonable interpretation of provisions of *lex lata* concerning the subject matter of this thesis. The solution of the most serious legislative problems is proposed within the summary of the submitted text.

As for the structure, this diploma thesis is divided into six parts, with each part being split in chapters and sub-chapters. The first part depicts the genesis and further evolution of the legal institution of donation mortis causa. The second part defines the terms fundamental for the thesis. This part also includes the answer to the ancient question, how to distinguish between a revocable (regarded as a legacy) and an irrevocable donation mortis causa (regarded as a donation). The third part deals with conceptual elements of mortis causa donation. In that section you can find an analysis of both advantages and disadvantages of broad conception of contractual autonomy of will in the context of irrevocable donation mortis causa. The thesis culminates in the fifth part, which focuses on relations between donation mortis causa and legal institutions of inheritance law. The submitted thesis is concluded with the sixth part, which is dedicated to the impacts of donation mortis causa on other areas of law. The whole text is permeated by comparative arguments. Czech legislation is compared mostly with the Austrian General Civil Code (ABGB), which served as the model of the effective Czech Civil Code in nearly all the legal provisions related to donation mortis causa.

The thesis comes to conclusion that current law regulation regarding the institute, which is subject matter of the thesis, is insufficient. It evokes significant legal uncertainty, and therefore the donation mortis causa cannot be recommended as an instrument suitable

for intergenerational wealth transfer. The thesis considers amendments of relevant legal provisions as apparently the only solution of current legislative issues.