

Protection of a forced heir and his disinheritance – Abstract

The protection of a forced heir is the protection of a descendant who is entitled to have the testator leave him at least a forced share of his estate. It is a traditional institute of inheritance law, which is a manifestation of the principle of familiarization and intergenerational solidarity by ensuring that the testator cannot completely neglect his descendant from his acquisition without a legal reason. The corrective, ensuring the autonomy of the testator's expression of will, is the existence of an institute of disinheritance, which the testator can use if his descendant is not worthy of the inheritance for a reason defined by law. The two institutes coexist and should be interpreted in conjunction with each other. The thesis aimed to describe the institutes, especially according to the substantive law, with the addition of the necessary context of procedural law. The aim of the thesis was also to draw attention to problematic aspects and to analyze controversial issues and vague legal concepts.

The first chapter is focused on defining the basic concepts of inheritance law, which are defined from general to specific. To understand the current legislation, much attention is paid to historical developments. The second chapter, therefore, describes quite extensively the regulation of institutes from the regulation of Roman law, through medieval law, to more modern legislation of the General Civil Code of 1811, the Civil Code of 1950, and the Civil Code of 1964.

The main focus of the thesis is the third to fifth chapter of the thesis. Firstly, the concept of a forced heir and the circle of persons who those are according to the current regulation is defined. Attention is also paid to the legal status of the forced heir and his rights in inheritance proceedings. This regulation is followed by the regulation of the forced share, i.e. the claim of the forced heir and the amount of this claim according to the age of the descendant. The forced share is a typical obligation claim of a forced heir, therefore the thesis further defines the possibility of fulfilling this claim.

In the following chapter, attention is paid to disinheritance, which can exclude the forced heir from the right to the forced share for legal reasons. This regulation is very specific, as case law is widely used in explaining the individual exhaustively defined reasons for disinheritance. In addition to methods of inheritance, attention is also paid to privileged forms of acquisition. To assess the lasting topicality of the topic, statistical data of the Notary Chamber of the Czech Republic are included, which illustrate that the declaration of disinheritance is still a current and more widely used institute.

The thesis also deals with the process of determining the rights to the forced share and, in short, also inheritance disputes.

The last chapter introduces the current regulation of the protection of the forced heir and his disinheritance in the general regulation of Spanish law.