

Duty to assert and duty to prove in civil proceedings

Abstract

The rigorous thesis deals with the duty to assert and the duty to prove in civil court proceedings with a focus on the burden of proof, its division and transfer between the participants in the proceedings. The work focuses mainly on litigation. The issue of the rules of division of the burden of proof is still relevant, because for the success of a party to the dispute it is absolutely essential to fulfill the duty to assert and the duty to prove and subsequently bear the burden of assertion and the burden of proof. The aim of the thesis is to analyze in detail the procedural obligations and burdens that are carried by the participants in civil proceedings. The focus of the work is the question of the division of the burden of proof between the parties to the proceedings and its transfer between the parties to the dispute.

The rigorous work is divided into an introduction, seven chapters and a conclusion. The introductory chapter describes general interpretations of evidence and the principles of civil procedure. The second chapter is devoted to the history of court proceedings and the development of the functioning of justice in the Czech Republic to state the context of the current concept of procedural obligations of the parties to court proceedings. The third chapter describes in detail the obligation to assert and the burden of assertion. The analysis of the duty of proof and the burden of proof follows in chapter four. This chapter further explains the *non liquet* state and its overcoming. The fifth chapter explains the basic rule of dividing the burden of proof, together with both historically older and modern theories of the burden of proof. Chapter six presents deviations from the basic rule of division of the burden of proof, i.e. special rules of division of the burden of proof according to individual legal regulations and the provisions of the current legal system. The last chapter presents proposals *de lege ferenda* with regard to specific findings from individual parts of the rigorous work. The work used as sources professional monographs, case law, commentary literature

as well as current and proposed legislation, as it also regulates the relevant problems of the burden of proof.

Key words

duty to assert

duty to prove

burden of proof