

Other court proceedings

Abstract

The goal of the rigorous thesis presented is to map comprehensively the application of other court proceedings in the procedural rules governing court proceedings, with the basis of this thesis being the area of civil procedural law. Other court proceedings are explicitly regulated only by Act No. 292/2013 Sb., on Special Court Proceedings (hereinafter also referred to as the "S.C.P."), however, it is an institute which is also used in the context of contentious proceedings regulated by Act No. 99/1963 Sb., the Code of Civil Procedure (hereinafter also referred to as the "C.C.P."). Other court proceedings, in their general definition, are acts of the court by which the court enters into immediate contact with the parties to the proceedings and which are considerably less formalised than the most similar to them hearings on the merits. Other court proceedings may be held outside the courtroom, even outside the courthouse. The conduct of other court proceedings is much more in the hands of the person conducting other court proceedings compared to the hearing on the merits. As it implies from the previous sentence, it is not only the judge who can convene and conduct other court proceedings.

The content of this rigorous thesis is divided into six parts, of which the largest attention is devoted to the part (the fourth) dealing with other court proceedings in the proceedings concerning cases of judicial care of minors. Within the context of the establishment of interdisciplinary cooperation (also the Cochem practice) in guardianship cases, the institution of other court proceedings is gaining importance. The convening of other court proceedings in private custody proceedings brings significantly less formalism to the area of justice, whereby the parties are led to an amicable settlement of the dispute by means of other court proceedings, while the instruments of other court proceedings transform the parties to the proceedings (parents of the minor child) from passive recipients of the court's decision into active participants in the proceedings, who are aware of their rights and are able to take (retake) the responsibility for decisions concerning their own child.

The thesis in the following chapters does not overlook other court proceedings in other types of civil proceedings. It analyses the regulation of other court proceedings in contentious proceedings, while in the context of the C.C.P., other court proceedings occur, for example, as a preliminary hearing under the provisions of section 114c of the C.C.P. In addition to the court care of minors, other court proceedings are of indispensable importance in non-contentious proceedings - on the issue of legal capacity and on grant of permission to accept or detain a person in a health institution (or detention proceedings). These two types of proceedings have in common that other

court proceedings are usually held outside the court building - most often in a hospital facility where the person whose rights are to be considered is located. In addition, this thesis deals in detail with the numerous applications of the practice of staffing the judicial department in these types of proceedings, which cannot be considered being in line with the constant case law.

It also includes the comparison with foreign legislation, the French legislation, in proceedings in issues of the court care of minors. French family law is entrusted to the hands of the family judge, and the agreement of the parents on the circumstances of the minor child is placed at the forefront of the court's decision, also in the context of the fact that the legislation tends considerably towards an amicable solution to the dispute and establishes the criteria according to which, if the parents do not agree, the court will decide. The criterion of respect for the other parent and compliance with agreements takes a prime position.

The work also includes general interpretation of the concept, purpose, and specific features of other court proceedings, including the historical context. Marginally, it is devoted to the search for institutes that are analogous to other court proceedings in the field of administrative and criminal justice.

The basic sources underlying this work are the commentaries to the texts of the acts (mainly the S.C.P. and the C.C.P.), case law of higher courts, book monographs and also personal observations from court practice.

In partial questions, the work provides the insight into possible future legislation, *de lege ferenda*, while such considerations are based primarily on the pitfalls of the application activity of the courts of first instance, in the academic level they are drawn from the inspirational sources of foreign legislation, whether the Cochem practice or the concept of family law in France, which, as already mentioned, is included in this work.

Key words:

Other court proceedings

The Cochem practice

Interdisciplinary cooperation

Preliminary proceedings

Visual inspection

Convening of the court proceedings

Chambre du conseil