

Název disertační práce v anglickém jazyce, abstrakt v anglickém jazyce a 3 klíčová slova v anglickém jazyce

The Insolvency Practitioner as a Procedural Entity of Insolvency Proceedings

The aim of this thesis is to thoroughly analyse the status of the insolvency practitioner as a procedural entity of insolvency proceedings *de lege lata*, to reveal unclear or unsatisfactory points of the applicable legislation and on the basis of this analysis to suggest appropriate legislative changes *de lege ferenda*.

The insolvency practitioner may be a natural person, an unlimited partnership and under certain conditions also a foreign company. The performance of this activity is regulated by law and a great emphasis is placed on qualifications of the insolvency practitioner, however, the legislator could have been stricter regarding the qualifications. Nationals of a member state and foreign companies providing the same guarantees of liability of shareholders as an unlimited partnership, which are performing the activity of an insolvency practitioner in another Member State, may also temporarily or occasionally act as visiting insolvency practitioners in the Czech Republic.

The right to perform the activity of the insolvency practitioner is exercised through performance of insolvency practitioner's office in specific insolvency proceedings. The insolvency practitioner is a special procedural entity. It becomes a party to the insolvency proceedings on a limited basis for as long as the court decides on his/her remuneration and reimbursement of cash expenses or in incidental disputes arising from insolvency proceedings. In incidental disputes the insolvency practitioner has the status of a party in a civil lawsuit.

The insolvency practitioner for insolvency proceedings is primarily appointed by an insolvency court mainly on the basis of a rotation principle, secondarily the practitioner may be appointed by a creditors' meeting. The insolvency practitioner's office may be terminated by his/her dismissal or by discharge from office. Important grounds for the dismissal of the practitioner by the court is, *inter alia*, the bias of the insolvency practitioner, unless it is only a partial bias in the meaning of Section 34 of the Insolvency Code.

Prior to the insolvency decision a provisional practitioner may be appointed by the insolvency court. In addition, the law envisages that other special types of insolvency

practitioners, namely the deputy insolvency practitioner, the separated practitioner and the special practitioner, may be active in the proceedings either successively or simultaneously.

Concerning theoretical basis of the insolvency practitioner's position, the interpretation given both by our jurisprudence and doctrine is unequivocal only in conclusion that the insolvency practitioner is not a party to the proceedings, but a special procedural entity and as such has an independent position vis-à-vis both the debtor and the creditors and cannot be considered as a representative of either the debtor or the creditors. Since in some agendas within performance of his/her office the insolvency practitioner possesses powers of at least partially public-law nature, his/her status in the proceedings is hybrid on the border of public and private law.

The basic framework of the insolvency practitioner's obligations, which the insolvency practitioner ought to always comply with when performing his/her office, follows from Section 36(1) of the Insolvency Code. The specific rights and obligations of the insolvency practitioner, which arise from law, and their scope vary according to a phase of the insolvency proceedings and to a form of insolvency and discharge. At the same time, they may be changed or amended by decisions of the insolvency court within its supervisory activities and in reorganization also by a reorganization plan. The insolvency practitioner possesses specific rights and obligations in bankruptcy of financial institutions as well as in European insolvency proceedings.

In addition to the insolvency practitioner, the insolvency court, the debtor, the creditors, the debtor's liquidator and the Public Prosecutor's Office are also the procedural entities of the insolvency proceedings. The insolvency court, together with the debtor and creditors exercising rights against the debtor, are basic subjects of insolvency proceedings. The debtor's liquidator and the Public Prosecutor's Office are classified by legal theory as special entities of proceedings.

The insolvency court always “stands” above the insolvency practitioner. The Public Prosecutor's Office is also in a superior position vis-à-vis the practitioner, albeit on a smaller scale. On the other hand, in relation to the debtor, the insolvency practitioner is in a clearly dominant position, the strength of which depends in particular on whether and to what extent the practitioner is the holder of the right of disposal of the insolvency estate. With regard to registered creditors, creditors grouped in creditor bodies occupy a stronger position vis-à-vis the insolvency practitioner. On the other hand, single registered creditors are generally in a weaker position. However, this position is different in case of secured creditors, whose status

vis-à-vis the insolvency practitioner is significantly strengthened. Creditors of claims against the insolvency estate and of claims equal to them enjoy a special status in insolvency proceedings. In the person of the liquidator, vis-à-vis the insolvency practitioner, the positions of the debtor (with regard to the provision of the debtor's assistance) and of the creditor of claims against the insolvency estate and possibly also of the registered creditor (as regards his/her claims for remuneration and cash expenses) are combined.

The liability of the practitioner for damage has an objective basis with a possibility of liberation. According to established case law, the state cannot be held liable for damage caused by the insolvency practitioner, but it may be liable for maladministration of the insolvency court in supervising the insolvency practitioner. The insolvency practitioner may be a perpetrator of a number of both property and economic crimes. Due to his/her unlawful conduct the insolvency practitioner may also commit an offence. Personal assets of the insolvency practitioner may be affected in the case of separated costs of proceedings, pecuniary penalties imposed by the insolvency court, pecuniary penalties imposed in criminal proceedings, fines for an offence, or an obligation to pay damages including reimbursement of the costs of both court and administrative proceedings.

The insolvency practitioner is entitled to remuneration and reimbursement of cash expenses for performance of his/her office. They are claims against the insolvency estate of a super-priority character. The formula for calculating the insolvency practitioner's remuneration generally varies in different forms of insolvency and discharge.

Key words: insolvency practitioner, insolvency proceedings, bankruptcy