

Conclusion

The objective of this work was to provide a comprehensive summary of the representation in the civil law. I have been focusing on the historic roots of this legal institute and law theories as well as on the previous, current and proposed legal enactment.

The contemporary understanding of representation in the entire development of the law is quite new. It was only the representation theory, created in 19th century that gained victory in theoretical disputes related to the meaning of representation and thus facilitated the subsequent development of the direct representation.²²¹ Indirect representation, the roots of which had been laid in the Roman law and which was the only representation used for centuries, stepped aside in its usage. The dominancy of the direct representation is proven by the current as well as proposed legal enactment that allows the indirect representation but it does not explicitly regulate it.

The direct representation is used in its contractual and legal forms, or in the form based on the decision by a respective authority. Regarding the proposed legal enactment of the legal persons' conduct, it may be necessary to consider another representation type that for example the German law calls "organschaftliche Vertretung", which is a representation of legal persons by their authorities. Such concept is known to the majority of the European systems of law and by accepting it we should reach the European standard with regards to the conduct of legal persons.

The proposed legal enactment of representation has been remarkably changed predominantly in the legal representation and custodianship. Therefore, in future there will be a new legal terminology that the current or previous legal enactments did not know in our country (e.g. custodianship councils, prior consent of the legal representative with the conduct of the minor, etc.)

The contractual representation stayed, with some minor exceptions (e.g. disclaim of a power of attorney, or a small change related to a mandate in the family law), practically in its current shape. Its modification, however, is not totally without problems. Some provisions of the contractual representation are not generally agreed to by all civil rights specialists (see e.g. the conduct of more agents). I think that especially

²²¹ Soergel-Wolf. Bürgerliches Gesetzbuch. Allgemeiner Teil § 1-240. 12. Auflage. W. Kohlhammer GmbH Stuttgart Berlin Köln Mainz, 1987, p. 1253-1254

in the question of expiry of a power of attorney (of power of attorney effects) it would be more advisable to accept a different solution.

The fundamental principle of the direct representation, the principle of fair-dealing (Offenheitsgrundsatz), which is in the current and future legal enactment embedded into the part related to the contractual representation, should be, in my opinion, included in the general provisions of representation as it concerns all types of direct representations. I also think that the issue of self-contracting should be included in the general provisions of representation, for the reason of achieving a higher legal security in these situations. The law should determine if such conduct is to be considered absolutely invalid, relatively invalid or valid upon fulfilling certain conditions.

The legal representation and custodianship have gone through some degree of modernisation in the new proposal of the civil law. The contractual representation was almost literally transferred from the current legal enactment. Despite that we can still say that it will compare favourably with the proposed legal enactment of the contractual representation on the European level.