

RESUMÉ

The title of my Rigorosis Diploma Thesis is „The legal position of the non-excludable successor“. This issue is regulated in the Czech Republic by Czech Civil Code from the year 1964. It is the part of the Czech hereditary law. Final form of the present Czech legal regulation is the result of many amendments. The last that mostly influenced this issue was the amendment from the year 1991. This novel was caused by the economic and social changes after the Velvet Revolution.

In my thesis I focused on the explication of the notions of non-excludable successor, disinheritance, the incapacity to inherit, the dismissal of the heritage. The legal institute of the non-excludable heir limits the considerable limit of the testators will.

Because of the long history of this issue I prepared one chapter only on the evolution of the notion of non-excludable successor. The roots of this issue we can find in these times of the Ancient Rome. More in detail I followed this problematic in the Common Civil Code of 1811 and Czech Civil Codes of 1951 and 1964.

The non-excludable successor in our legal system is just descendant of the testator in the first or further degree. The right to become the non-excludable successor has even the nasciturus.

In the 4th chapter called “The disinheritance” I tried to analyse all reasons that can cause the possibility of the testator to disinherit his descendant. The non-excludable successor has to be disinherited by special act called the disinheritance document.

The deceased person may disinherit his or her descendant if:

1. The descendant immorally did not provide the deceased person with a due care in sickness, old age or other important cases,
2. the descendant permanently manifested no proper concern of the deceased person that should be manifested by a descendant,
3. the descendant was sentenced to an at least one-year imprisonment for an intentional crime,
4. the descendant permanently lives an inappropriate life.

In the next chapter I analysed two reasons that caused the incapacity to inherit of the non-excludable successor. The first one is used in the case if the heir commits an intentional crime against the testator, his wife, his children or against his parents. The second one is used in the case if the heir acts immorally against the last will of the testator.

The non-excludable successor if he is not disinherited or if there is no reason to establish the incapacity to inherit, he has the right to his legal heir's share. The major heir has the right to the half of what they would inherit if there had been no will. If the testator has minor children, they must acquire at least what their legal share is, so there is no freedom of disposition when the testator had just minor children.

In one chapter I focus on the probate proceedings. This subject is so large that I stipulate only on the sketch of it.

In the end I tried to bring near the legal regulation of this issue in several countries like Poland, Germany, Great Britain, France, Portugal and in the countries with Islamic religion. Because we are shortly members of European Union I have made simple report on the evolution of the harmonization of the hereditary law.

I finished my Rigorosis Diploma Thesis with the short introduction to the Czech future legal regulation of the hereditary law in the new Civil Code.

I chose this topic because I was always interested in the hereditary law. I think that this issue of the non-excludable heir is very useful because everyone is a descendent of his parents.