

RESUMÉ

The settlement of the community property is understood as an arrangement of relationships between the spouses to the property (both assets and liabilities), which was a subject of their community property at the time of the marriage dissolution.

The settlement of the community property must be arranged, with some exceptions, pursuant to the principles regulated by Cl. 149 section 2 and 3 of the Civil Code as follows:

- Principle of equality of shares
- Principle of aspect of nurturance and aspect of merit in acquisition and maintenance of common things
- Principle of consideration of minor children's needs
- Principle of offset.

Pursuant to Cl. 150 section 4 of the Civil Code, the community property can be settled in three ways:

- 1) By agreement
- 2) By judicial decision
- 3) By application of conclusive legal assumption.

The three comprehensively defined methods of the settlement of the community property may be applied both separately and by their combination. The Czech legal order prefers concluding an agreement on the community property settlement to a judicial decision and to an application of the so-called conclusive legal assumption.

ad 1)

When concluding the agreement, decisive is the will and discretion of both of the spouses whether they would become parties to a contract in accordance with law. The agreement on the community property settlement must always be in writing. Failure to observe the written form results in its being null and void. If the subjects of the agreement are other things than real estates, the agreement comes into effect by signature of both of the contractual parties, if not agreed otherwise between the contractual parties. If the subject is a real estate, the agreement, however, comes into effect only after the entry of the record of the title in the Land Register has been made. Two opposite opinions have arisen on effect of the agreement, the subject of which is the real estate, and consequently the entry of the record of the title in the Land Register must be made. One opinion maintains that the moment of the settlement is related to the very effect of the agreement, i. e. as of the date of the contract conclusion; the opposite opinion is that in case the settlement agreement has already been concluded, but the application for the permission to enter a record of the title in the Land Register has not been filed, the bondage of the spouses' will expires ex lege by elapsing of the three years' time determined in Cl. 150 section 4 of the Civil Code.

The aforementioned relates to the agreement, which was concluded between the divorced spouses, i. e. after the legal power of the judgment of the marriage divorce. The Family Law, by its provision of Cl. 24a section 1, in effect from 1 August, 1998, introduced another possibility of the spouses' mutual agreement at the divorce by agreement. The conditions of the divorce by agreement are that the marriage lasted at least one year, the spouses do not live together for at least six months, and that the other spouse joins the application for the divorce. The spouses submit to the court their agreement in writing and with signatures officially authenticated, which solves their relationship to the property, arrangement of rights and obligations resulting from the common housing, or possibly, the payment of alimentation for the time after divorce. The written agreement is concluded as early as at the existence of the marriage; it comes into

force on the day of signature by both parties; however, it takes effect only after the legal force of the judgment of divorce. If the spouses have common minor children, they are obliged to submit, in addition, the final and conclusive judicial decision on approval of the parents' agreement regulating the minor children's situation for the time after the divorce.

ad 2)

The application for the commencement of proceedings of the community property settlement must be filed within a three years' time from the marriage dissolution. Both spouses are entitled to file the application; both of them have a position of both the petitioner and the respondent – it is a so-called *judicium duplex* proceeding. During the proceedings the court must first ascertain the scope of the community property. What is included in the community property is exactly regulated by Cl. 143 section 1 of the Civil Code. The community property is based above all on the sources, which are employment or business activity. In connection with the business activity of one of the spouses many questions appear, such as awarding of consent by the other spouse who does not do business to use the property included in the community property; evaluation of the business activity; or settlement of the rights and obligations resulting from the concluded contract of leasing.

Having determined the subject of the community property, the court establishes the price of the things, which are included in the community property. The price may be defined by the consistent statement of the participants; or, if there is a dispute about the price between the participants, it is necessary to have the thing or right evaluated by an expert opinion. The submitted doctoral thesis is focused on the evaluation not only of movable and immovable things, but also on evaluation of the stake in the business company. As soon as the court ascertains and evaluates the mass of the community property, the settlement is executed according to the established settlement principles, and the judgment is awarded.

The doctoral thesis also deals with specific ways of the settlement of the community property through the judicial decision as follows:

- At the termination of the marriage due to death of one of the spouses, or by declaration of the death of one of the spouses
- At the termination of the community property during the marriage (in case of bankruptcy proceedings pursuant to the Insolvency Law, or in case of imposition of a sentence of forfeiture of the property or its part pursuant to the Criminal Code)
- At the reduction of the community property scope by the judicial decision (for serious reasons, reduction to things of a usual equipment of a common household; or when one of the spouses obtained a permit to perform business activities; or if he/she became a partner with an unlimited liability in a business company).

ad 3)

If the community property was not settled after the termination by agreement, or neither of the spouses filed an application with the court for the settlement within the legal period of three years, the settlement of the community property will be settled by law pursuant to Cl. 150 section 4 of the Civil Code. This provision is described in the legal practice as the so-called conclusive legal assumption of the community property settlement, which prevents the duration of the unsettled community property for an unlimited period of time. This is an exact legal set of conditions, which must be respected both by the former spouses and by third persons (creditors).

It applies to the movables that they are the ownership of the person who has used them for his/her needs or his/her family needs at the end of the three year period, considering that they need not be used for the whole of the three year period. The same applies to the real estate – ex lege it is a subject of the community property of the former spouses with equal shares. The division of the

real estate is followed by the problems of the entry of the record of the title in the Land Register. In the practice, complicated cases often occur when the conclusive legal assumption applies not only to movable and immovable things, but also to other property rights, among them a member share in a housing cooperative. The process of the settlement of the member share includes not only the definition establishing who will be the exclusive member of the housing cooperative and exclusive tenant of the cooperative flat, but also the amount of compensation, which will fall to that of the divorced spouses, who did not become the exclusive member of the housing cooperative and exclusive tenant of the cooperative flat.

In respect of the theme of the legal assumption, the doctoral thesis is in more details focused on two contradictory opinions of the Supreme Court of the Czech Republic on whether the legal assumption should appear at the commencement of the proceedings at the court for the community property settlement. Due to the inconsistency of the judicature of the Supreme Court of the Czech Republic, contradictory judicial decisions in one legal case may occur in the practice of the courts.