

Abstract

POLÁČKOVÁ, Saskia: *Security instruments in private law*. [PhD. thesis] / Saskia Poláčková – Charles University in Prague. Faculty of Law; Department of civil law. – Supervisor: doc. JUDr. Mgr. Josef Salač, PhD.. Praha: PF UK, 2012.

This thesis shows results of an investigation into security instruments recognized by private law of Czech republic and of Slovak republic, specifically focusing on substantive civil law as a representation of general private law. The hypothesis under investigation is that a number of existing security instruments could be fully replaced by a single security instrument, namely the lien. In order to confirm or reject the hypothesis, common characteristics – principle of subsidiarity, principle of accessority, purpose to provide security, purpose to ensure repayment – as well as specific characteristics of individual instruments are compared.

The thesis is divided into chapters, sections and subsections, and supplemented by the abstract, introduction, summary and bibliography.

Chapter One deals with security instruments in private law, mainly in the areas of substantive civil law, commercial law and labour law as codified in Czech republic and Slovak republic. In this chapter, individual security instruments are categorized into several groups based on their respective common characteristics and differences. To better clarify the hypothesis, common aspects of security instruments are examined: these are the principles of subsidiarity and accessority, and the instruments' purpose to provide security and ensure repayment of an obligation. Chapter One concludes by introducing lien, being the most complexly defined security instrument, as the main further focus of the thesis.

Chapter Two presents the historical development of lien starting from Roman times, leading through periods of Czech state and Kingdom of Hungary, the Austro-Hungarian monarchy, first Czechoslovak republic, and onwards through the 20th century and its

individual codification efforts all the way up to the currently valid civil legislation and present recodification projects. In the historical development of lien, a continuous link to Roman tradition is obvious, and indeed this link can be considered a natural consequence of the precision and quality of the Roman legal system; thanks to this precision, even in modern times there is no need to radically alter those traditional principles. Of course, with development of our society, the institute of lien must be modified and customized to satisfy society's current needs. In the Czech lands, there is a strong affinity to German and Austrian legislation, whereas in current Slovak territory a continuation of traditional law can be observed. Only in the 19th century does the influence of Austrian legislation impose itself in both above-mentioned territories, in the form of AGBG. This influence remains present until the first codification of civil law in 1950, in spite of codification efforts made already during the first Czechoslovak republic, which however could not be brought to successful completion due to wider events in Europe. Subsequent recodifications of civil law led to the destruction of lien as a security instrument, up to its almost full elimination from practical use. A turnaround only came after the change of political regime in 1989, whereafter lien was gradually reintroduced into civil law. Breakup of the Czechoslovak federative republic led to differences in subsequent development of lien in the two newly established states. In Slovak republic, a complete reform of lien legislation took place in 2002, whereas in Czech republic civil law including lien legislation has been recodified with law no. 89/2012 Coll.. In Slovakia, work on civil law recodification is still ongoing.

Chapter Three is the most extensive one in the thesis, and is dedicated to lien legislation from the perspective of previously mentioned basic institutes of security instruments (subsidiarity, accessority, security, repayment). Each of these institutes is analyzed in a separate section. Principles of subsidiarity and accessority in the context of lien are studied by means of their fundamental features. The purpose of security is expressed mainly by means of establishing and making effective a lien; those means are, namely, pledge agreement, heirs' agreement, court decision, decision of an administrative body, and statutory lien. The purpose of ensuring repayment is elaborated on by analyzing

then means of execution of the creditor's rights in a situation where the obligor has defaulted on their primary obligation and an execution of the secondary right, i.e. the lien, takes place. Given that the thesis focuses on lien as the most generally applicable security instrument, this chapter deals mostly with lien-related legislation valid in the Czech republic; subsequent shift of focus to Slovak republic's legislation is motivated by the institute of direct lien execution by the creditor, because this institute does not exist in Czech legislation, nor is it planned to be introduced in the recodified Civil Codex. Other means of lien execution are sale of collateral via auction, or sale of collateral by a court-appointed executor.

Chapter Four describes recodification of civil law in both Czech and Slovak republic. In Czech republic, the recodification process has been nearly finished and a new Civil Codex, law no. 89/2012 is prepared together with consistent updates of related legislation such as **Zákon o obchodních společnostech a družstvech (Zákon o obchodních korporacích)**¹ and **Zákon o mezinárodním právu soukromém**². However, a status of completely unified legislation is not reached, because labour legislation remains fully regulated by the Labour Codex. In Slovak republic, the recodification process is still far from a final structured version that could be submitted to a vote in parliament; however, a preliminary structured version is currently being drafted in order to be published for comments and discussion. When looking at the accompanying rationale reports (and in Czech republic at the final version of the law), differences are obvious in the regulations of civil law and hence also of security instruments in the recodified Civil Codexes of the two countries. In the Czech codex, there is clear interest in merging the draft recodification of 1937, current civil law regulations from abroad, and specific developments in the Czech republic. On the other hand, the recodification being prepared in Slovakia aims more towards conserving existing regulation while updating the Codex from a structural point of view and innovating a number of other institutes which have not been reformed up to now. Hopefully, efforts to recodify civil law will be successfully completed and the public will be able to benefit from updated legislation.

1 Zákon č. 90/2012 Sb. o obchodních společnostech a družstvech (Zákon o obchodních korporacích)

2 Zákon č. 91/2012 Sb. o mezinárodním právu soukromém

Finally in the Conclusion, information is summarized about the fundamental and common features of security instruments. An inseparable part of the Conclusion is a statement on the validity of the hypothesis under investigation in this thesis.

Keywords: Security instruments, lien, subsidiarity, accessory, security, repayment, establishment and effectiveness of liens, execution of liens, recodification of civil law