Abstract

Preliminary injunction is one of the most important means of protecting the rights of the participants of civil proceedings. The proceedings on the preliminary injunction is easier and faster than the proceedings on the merits, which allows the courts to act without undue delays and to effectively secure either the legal relations of the parties or the risk of loss. The consequence of these facts, however, is a restriction on the application of certain principles of civil procedure, and therefore also of the rights of the parties, especially the defendant.

The question is whether this restriction is not unreasonably high and thus whether the current legal regulations meet requirements that are placed on it. The aim of this thesis is to provide a critical look at the regulation of preliminary injunctions, especially on its possibilities and limits, regarding the doctrinal and judicial conclusions.

The first part of this thesis deals with the regulation of preliminary injunctions in general. Preliminary injunctions are there defined in terms of their meaning and the purpose, then the author briefly describes the basic principles, the taxonomy and the history of the regulation.

The second and the third part focus on the material and formal conditions of the preliminary injunction. In addition to the other aspects, an attention is paid to the reasons for granting the preliminary injunction and to the petitioner's obligation to lodge a security for loss, since the importance of the security is extremely high, its role is, however, very underestimated in judicial practice.

The fourth part of the thesis deals with the proceedings on the proposal. The author concerns with the various ways, how could be decided on the proposal, then he discusses the constituent elements of granting the preliminary injunction.

The fifth part focuses on a liability connected with the interim injunction. After that, there is an analysis of the petitioner’s objective liability and of the state liability.

The last part presents the Swedish treatment on the preliminary injunction and its comparison with the Czech legal regulation. The author chose the Swedish treatment primarily because it is a great example of the way, how is possible to have both the effective regulation and the protection of the participants’ rights.

Finally, the author evaluates the outcome of its investigation. He recognizes that the current legislation does not meet the requirements that are placed on the regulation of the interim injunction, regardless of whether by the constitution or by the principles of civil procedure, or “just” by practical needs of citizens. The rate of reduction of the participants’ rights is such high that it could interfere with their right to a fair trial guaranteed by the Article 36 of the Charter of Fundamental Rights and Freedoms.

Such facts give the author a reason to believe that the need to amend the legislation in question is indeed timely. He attempts therefore to propose which steps should be done to make the Czech legislation meaningful, balanced and self-consistent. The Swedish model may provide some inspiration for that.