

Abstract

The aim of this thesis named „Incidental disputes in Insolvency proceeding“, is to analyze a theme of Incidental disputes at the point of view of a insolvency law of the Czech Republic. These disputes were in history called in different ways. In the appropriate part of this thesis we will see the history of the Incidental disputes in the relevant Civil Codes of the Czech Republic or Czechoslovakia. This area of law is typical for its generality when the essential influence is reserved for a judicature. For that reason there is a great emphasis on the decisions of the Czech Republic’s Supreme Court and courts in this thesis. The thesis is considering and focuses on the question, if the same insolvency judge should or should not decide in the matters of the Incidental disputes during ongoing Insolvency proceedings. On one hand there is a statement No. 448/2004 of the Constitutional Court of the Czech Republic, which says that it is contrary to requirements of the prejudice of the judge and the independence of court. The Constitutional Court maintains a position that the Insolvency Court should not decide an incidental disputes where the insolvency administrator appears as a litigant.

The Constitutional Court says that the legal relationship between the Insolvency Court and the Insolvency Administrator is specific and partly influenced by the insolvency proceeding. These elements then exclude the Insolvency Court out of the decision-making about the incidental dispute impartially. The Constitutional Court of the Czech Republic base its arguments on the “First Czechoslovakian Republic’s” doctrine, which says that in the Incidental disputes were the public(-law) element while the Incidental dispute proceeding had the private(-law) element. The Insolvency and the Incidental proceeding were two different issue so it shouldn’t be decided by the same court.

The thesis is focused on contrast between mentioned arguments of the Constitutional Court of Czech Republic and the arguments of the authors of new Insolvency Code, which come into force on the 1st January 2008. The authors says that if the same Insolvency Court which solve also insolvency proceeding will decide in particular Incidental dispute, and then the inappropriate duality will be removed. Insolvency court can also take advantage of proceed insolvency proceeding and pass the sentence much faster.

In the thesis the author concludes that neither one mentioned method I consider for better one. The arguments of the Constitutional Court of the Czech Republic are reasonable and the author thinks that till the Insolvency Administrator will be appointed by judge (Insolvency court) the situation will be still controversial.

Solution should be if the Insolvency Administrator will be appointed by the creditor's body.

Other parts of the thesis are focused on particular topics which are connected to incidental disputes.

Text of the thesis is divided into sixteen chapters.

In Chapter One there is an introduction to this thesis and description the role of the insolvency proceeding in society.

Chapter Two concentrates on the theme of possible ways how to solve the bankruptcy.

Chapter Three illustrates the process of modification of the Incidental disputes in the Czech national law.

Chapter Four describes the change of approach in insolvency proceedings since acceptance of the Czech Insolvency Code.

The influence of the EU regulation on the Czech insolvency law is solved in chapter five, especially the regulation No. 1346/2000.

The most comprehensive chapter is Chapter six. It is focused on general provision about the Incidental disputes and proceeding. The chapter is divided into six parts. Part one looks at the Incidental actions in the Code of Civil procedure. Part Two describes the Incidental disputes in Insolvency Code. Part Three concentrates on a consideration of Incident proceeding. Part Four deals with the decision in Incidental dispute. Part Five refers about the incidental disputes in Germany following the “*Insolvenzordnung*”. Part six describes reform of insolvency law in Germany.

Following chapters are about the individual types of the Incidental actions as they are mentioned in the Insolvency Code.

Chapter Seven describes the action for sum of the claim.

Chapter Eight describes the eliminative action and the system of proceeding. In particular parts of the chapter there are mentioned the costs of proceeding, court costs etc. The Chapter eight is divided into eleven parts. First and second part mentions the general premises for using the eliminative action.

Chapter Nine illustrates the disputes of the settlement of the marital property.

Following chapter Ten describes the action for counterclaim and deal with the active and passive legitimacy.

Chapter Eleven describes the disputes for compensation which arises out of breach of the Insolvency Administrator’s legal duty.

Chapter twelve describes the property advantage gains out of null and voidable legal act Chapter Thirteen and Fourteen describes the last two incidental disputes mentioned in § 159 sub. 1.

Chapter Fifteen deals with the consideration of the new enactment of the Insolvency Code.

Last Chapter comprehends a conclusion; briefly summarize general findings of the thesis.