Relative Ineffectiveness of Legal Actions in a Comparative Perspective

Abstract

The thesis at hand deals with Sections 589 to 599 of the Civil Code which governs the relative ineffectiveness of legal acts. Thus, it probes provisions designed to legally and economically protect the creditor from a fraudulent conveyance of a debtor. The aim of the thesis is to interpret the afore-said provisions in a way that would comply with the sense and purpose of the explored legal institution. In that respect, an emphasis is laid on a comparative analysis of Austrian and German approach both having tradition lasting more than 130 years. On top of that, the thesis describes the conception adhered to in the Czech territory between 1950 and 1964 and especially before 1950 when the Acts on the right to contest were in effect. The knowledge gained is subsequently confronted with the current Czech legal doctrine and case-law of the highest courts that relates to the interpretation of Sec. 42a of the Civil Code from 1964. The author tries to examine and eventually reassess the existing approach in the light of comparative findings. Especially recent case-law of the Supreme Court of the Czech Republic is being deeply analysed. Those conclusions which mostly comply with the meaning of law and its purpose are being preferred.

The thesis is divided into nine chapters. The first one deals with terminology which will then be used throughout the paper. The second chapter summarizes the main principles upon which the relative ineffectiveness is being built. The third chapter describes the history of the legislation in the Czech Republic. In the following chapter, the legal solutions and doctrinal approach in Austria and Germany are being examined.

Chapter five to nine which constitute the core of the thesis are dedicated to the relevant provisions of the new Czech Civil Code. To provide for an appropriate interpretation, the author uses knowledge she gained from compared legal systems. The fifth chapter tackles general questions of relative ineffectiveness, especially its legal character and nature. The author refuses the theory of “in re effect

of the contest" which seems to prevail in the Czech legal doctrine and case-law of the Supreme Court. She prefers the so-called "liability theory" that compares the right to contest to a guarantee or security. The sixth chapter specifies the conditions of contestability (Sec. 589) – legal action of the debtor, disadvantage of the creditor and executable claim. The seventh chapter is devoted to the three legal cases of contestability (fraudulent conveyance, wasting of property and gratuitous legal actions). Procedural questions of the right to contest are being explored in chapter eight. Above all, the actio Paulianna and character of court's decision are subject to examination. Finally, the ninth chapter discusses the consequences of a successful contest. The emphasis is put on the nature and content of the primary claim of the creditor, the secondary claim on compensation and the compensation for damages.