

Legal force and enforcement of judgement

Abstract

The subject of this thesis are legal force and enforcement of judicial decisions adjudicated in the civil procedure. Its main goal is to provide an in depth yet comprehensive analysis of its effects, its role in the judicial proces and to demonstrate their functional connexion. A secondary objectif of this thesis is to provide the reader with a current legislation based critical assesement of the legal terminology employed by the czech doctrine to describe the effects of legal force.

Despite the fact that the legal force and enforcement of judicial decisions are closely linked by their purpose, they are conceptually independent. Therefore, they will be dealt with separately. First, the legal force of a judicial decision will be examined, second, its enforcement will be adressed. The thesis is divided into five chapters in total which are further subdivided into sections and subsections.

The first chapter consists of a brief introduction to the relevant mechanics of the Roman civil procedure which importance to the notion of legal force as we know it is not to be underestimated. Apart from a historical context, its analysis should contribute to a better understanding of its true nature and function in the contemporary civil procedure. In this context, material and procedural theories of legal force will be presented shortly as well.

In the second chapter I will dissect a legal phenomenon which is referred to by a part of the czech doctrine as formal legal force or finality of the judgement. My main goal in this chapter will be to determine its true nature to which there exist multiple opinions given that its full understanding constitutes a precondition to a successful definition of the material legal force and its individual effects. Those effects will be the subject of chapters three and four of this thesis respectively.

The third a the fourth chapters will be devoted to the material legal force, or more precisely its effects which are those of the binding force and irrevocability of the judgement. In these chapters I will initially proceed to analyse all preconditions that must be met for these effects to apply, subsequently I will deal with their nature and role in the judicial proces. Last, but not least I will try to provide a positive definition of both of these effects mainly through their subjective and objective boundaries.

The fifth and final chapter of this thesis will be dedicated exclusively to the enforcement of judicial decisions. First, I will put an emphasis on the functional connection between the legal force and enforcement of a judicial decision and their complementarity. Afterwards, as it was the case with the legal force, both formal and material enforcement will be individually addressed within their own sections. Both of these will be laid out in general terms and with regard to the different types of judicial decisions present in the civil procedure. Finally, the preliminary enforcement of a judicial decision and its suspension will be presented.

Key words: legal force, enforcement, civil procedure