

*Evidence in civil contentious proceedings
with regard to the accusatorial principle*

Abstract

The goal of this master's thesis is to provide a comprehensive overview of the fundamental principle of civil contentious proceedings – the accusatorial principle, according to which the activities of process subjects are guided in the context of evidence.

Under this principle, Czech courts look for facts to the extent claimed by parties because they have a decisive role in contentious proceedings. The parties to the proceedings develop the legal proceeding through their mutual adversarial activities and are responsible for establishing the facts, as the burden of proof and the burden of persuasion lays on them. The court has to make an objective and impartial decision on the basis of the gathered evidence in the civil litigation. If neither party is sufficiently active, they are at risk of an unsuccessful outcome of the litigation.

However, the accusatorial principle is modified by law and other procedural principles. Exceptions are therefore allowed, and on their basis the court may intervene and provide their own additional evidence. The law allows it on the basis of two cumulative conditions – evidence must be necessary for establishing the facts and the basis for the taking evidence must be in the file. The legal wording therefore shows that the level of judicial activity is not specifically limited, and judges are given an opportunity to come up with their own interpretation of the provision, which causes and may further cause difficulties in the Czech judicial practice.

In its first half, the thesis dealt with the historical development of the accusatorial principle, main historical concepts of this principle were introduced and a presentation of their changes from the beginning of Czechoslovakia to the present day followed. Another part was devoted to an analysis of the accusatorial principle in foreign regulations, where the civil procedural rules of Austria, Germany and Slovakia were used due to their historical significance. The final part contains an illustration of the accusatorial principle in case law, ending with a brief summary which discusses the issue of the accusatorial principle in the decision-making activities of Czech courts.

Key words: accusatorial principle, principles of civil proceedings dealing with contentious cases, evidence proceedings, burden of proof