

Protective measures in Czech Civil Procedure Law

Abstract

This dissertation deals with the protective measures constituting a special type of the Czech civil procedure besides the proceedings on law finding, enforcement and insolvency. The theory refers to this sort of procedure as a set of procedural institutes that have little in common, except for the same basis residing in interim securing of rights or in securing effective exercise of rights.

The author deals with the protective legal instruments as perceived by the predominant doctrine, which corresponds to the essence of the matter and to the legal regulation, that is to say, pre-trial reconciliation (also called a Praetorian reconciliation), preliminary measures (injunctions), pre-trial evidence and subject of the evidence securing, judicial (and also executor) lien and disturbed possession action. She emphasizes the general regulation of preliminary measures, but the submitted analysis is in a significant extent applicable as well to the preliminary measures under the Act on Special Court Proceedings.

The objective of the dissertation is to present a complex work on the protective measures in Czech civil procedure law, currently absent in the Czech legal literature.

The author has divided the dissertation into two parts – general and special. The first (general) part is consecrated to the historical development of protective measures, constitution of its individual institutes and their place in the valid legal order. The author analyzes its meaning and purpose, the essence of its individual institutes, as well as the principles by which it is governed. She also deals with the mutual relationship of the protective measures and security instruments of substantive law. In addition, the author deals with the rules of protective measures in Slovakia, France, Germany and the United Kingdom. She analyzes the respective rules in the European Law, including the correlation between the EU law and national law in the matter of the security instruments. She also mentions the respective regulation on the level of the European Convention on Human Rights and on the international level. This part of the dissertation results in its conclusion which contains the evaluation of the valid legal regulation, including its comparison with other foreign regulations. The author outlines the advantages and disadvantages of the Czech legislation and, in the light of a comparative research, she is considering in general possible changes to the legal rules *de lege ferenda*.

The second (special) part of the dissertation is consecrated to the protective measures from the perspective of the right to a fair trial. The subject of a more detailed analysis is to provide a thorough presentation of the moments considered by the author to be the most problematic in the light of the fair trial, namely the requirement to duly reason a decision, the application of the principle of equality and adversity, the principle of direct and oral procedure and right of access to a court. The author has devoted a chapter to the damages claim which is an instrument balancing the position of the parties in keeping with the rules of the fair trial. The special part results also in the particular law amendments proposals *de lege ferenda*.

The individual chapters of the dissertation are concluded with partial conclusions, in which the author summarizes partial knowledge of the subject. The common line between the general and the special part lies within the general preliminary measures, as the most used and the most problematic component of the protective measures.