

Resume

This thesis deals with the legal institute of settlement and distribution. The introductory chapter contains an attempt to give a general definition of this term, which is mostly lacking in literature. The following parts are focused on positive application of this institute in civil law and the particular substance of this term.

The legal institute of settlement and distribution is not generally established by any legal regulation. Legal provisions use this term *ad hoc*. In spite of this fact, common attributes of application of this institute in various legal situations can be found. Therefore, an attempt to give a general definition is realizable. Using this definition, the institute of settlement and distribution can be found even in those legal norms and provisions that do not use this term expressively.

It is especially the Civil Code that uses this law term with relation to settlement and distribution of common property, settlement and distribution of community property and settlement and distribution of decedent's estate.

A general definition of this institute or process is not usually done in legal literature. The general term is not usually contained even in the law dictionaries.

Effort to give a general definition results in the following circumscription:

“Settlement and distribution” is the process aimed at creation of new legal relations of persons that are tied together by their relation to the object of settlement and distribution, as well as to the creation of new legal relations of these persons to the actual object of settlement and distribution and replacement of the primary legal relations.”

The settlement should be done by agreement of the persons concerned firstly. When such agreement cannot be reached, the situation shall be solved by decision of an authority, the decision either based on motion, or also *ex officio*. In principle, this decision is of constitutive nature.

When a motion of the concerned person required by law is not filed and at the same time there is public interest to arrive at final settlement of relations, the legal presumption of settlement is applied (as far as community property of spouses is concerned). Currently, the settlement and distribution by authoritative decision is applied when community property of spouses is concerned and also in case of settlement and distribution of common property. The

competent authority is the court. The original text of the Civil Code provided for application of settlement and distribution by authoritative decision also in case of settlement and distribution of decedent's estate. The competent authority to decide was the state notary. As far as these authoritative decisions are concerned, law provides for the method of settlement and distribution and the court (or another authority) is not bound by proposals of the parties. In principle, the effect of settlement and distribution is restricted *inter partes* and does not concern rights and obligations of third persons. An exception could be seen in case of settlement and distribution of descendants estate. In these cases liability is restricted to the amount of heir's share. But it does not result from different nature of settlement in this case.

The situations covered by the Civil Code that meet the characteristics of settlement and distribution in fact, though the law does not use this term, are for example: settlement of the relation between the possessor and the owner, settlement of claims arising out of unjust enrichment and settlement of mutual claims arising in relation with solidary obligations. In these cases there is no intervention of any official authority and the method of the settlement is provided by law or is based on agreement.