

DISSERTATION ABSTRACT

1. Current situation of the topic

I have decided to concentrate in my research leading to preparation of this dissertation to the topic as stated: „ *The position of financial institutions in the new insolvency act, and that in the context of regulation under the European law* “.

Numerous articles commenting the new act no. 182/2006 Coll., on the insolvency and the ways of its solution (the insolvency code) (the „*IZ*“) have been published up to now. However, the particular area of law, specified in the headline of this dissertation, has not been analyzed in detail in the available legal doctrinal sources (professional literature) in the satisfactory manner yet.

2. Dissertation projects and goals

The goal of this dissertation is to examine the position of financial institutions in the insolvency proceedings in general and its varieties such as

the bankruptcy proceeding (*konkurs*), reorganization (*reorganizace*) and the process of discharge from the debts (*oddlužení*).

2.1 Fundamental concepts (legal definitions)

The first part of the dissertation is targeted on the accurate definition of the financial institutions concept (*finanční instituce*) in the legal system of the Czech Republic and its segmentation into banks, saving and credit cooperatives and the electronic money

institutions (*instituce elektronických peněz*), the insurance companies (*pojišťovny*) and the reinsurance companies (*zajišťovny*). Together with the above specified range of legal entities is mentioned connection to the relevant legislative provisions within the Czech legal system of financial institutions. In this context, the existence of a uniform bank license (*jednotné licence*) shall be pointed out.

2.2 Position of financial institutions as creditors in the insolvency proceedings

The successive part of dissertation deals with a description of the financial institution position as debtors in the insolvency proceedings.

All the relevant rights, claims and entitlements as well as the duties and liabilities of financial institutions as creditors under the antecedent (bankruptcy) act no. 328/1991 Col. on bankruptcy and settlements (the „ZKV“), are compared with the corresponding instant legislative provisions as contained in the IZ. Special attention is paid to the particular provisions of the IZ, where the position of financial institutions as creditors in the insolvency proceedings has been strengthened.

Moreover, an in-depth discourse follows regarding not only the instruments of (involvement) of secured creditors (*zajištění věřitelé*) in the creditors' organs (*věřitelské orgány*), but also the recovery of claims of secured creditors in way of their announcement (*přihlašování pohledávek*) in the insolvency proceedings.

Beyond that, a new basic rule of the IZ regarding realization (*zpeněžení*) of (especially) mortgages is clarified in the dissertation. In this sense, the principles consist fundamentally in satisfaction (*uspokojení*) of secured creditors out of the proceeds of sale either of respective movable or real assets (*věci*), or of respective right (*právo*), receivable (*pohledávka*) or another tangible value (asset) (*jiná majetková hodnota*).

The subsequent dissertation part clarifies a new legal institution - the reorganization. The reorganization constitutes one of the ways (modalities) how to dissolve a debtor's bankruptcy (*způsoby řešení úpadku*). The dissertation concerned with the participation of secured creditors firstly on the preparation, the composition and finally on the fulfillment of a corresponding scheme of reorganization (*reorganizační plán*).

In the context of above outlined possibilities of the discharge from the debts solutions it is impossible to omit the latest institute of discharge from the debts. Above all the implications of consequences this .. A relevant mention of possible outcomes (respectively of a impact) of this discharge from the debts on the claims (receivables) of the secured creditors is there made in the dissertation.

After all, the dissertation looks into the ineffective (invalid) legal acts (transactions) (*neúčinnost právních úkonů*) within the framework of insolvency proceedings. In this regard, a comparison of this legal institution with the previous practice in accordance with the ZKV is there made.

There shall be draw a reader's attention to the applicable regulations of the IZ on so called "credit financing" (*úvěrové financování*) as well.

2.3 Bankruptcy of financial institutions

The subsequent dissertation part (chapter) concentrates on bankruptcy (*úpadek*) of

financial institutions under the IZ. The instance IZ regulation on financial institutions' bankruptcy is positioned on the secondary European law (legislation), namely on the relevant directives.

Then, the dissertation gives a presentation on the pre-conditions as well as the assumptions for the insolvency proceedings opening. These conditions and assumptions are explained more closely in reference to individual types (categories) of financial institutions. All the respective petitioners (applicants) as parties to the (insolvency) proceedings, entitled to file for insolvency (*osoby oprávněné podat návrh*), are specified as well.

The legal concept of so called "mortgage-backed assets (estate)" (*hypoteční podstata*) shall be further clarified. This concept forms an integral part (component) of Czech insolvency (bankruptcy) for a short period of time.

A recapitulation follows, comprehending all the impacts (outcomes) of an opened insolvency proceedings on the rights of third parties.

3. Formal dissertation arrangement

3.1 Introduction and prologue

Firstly, the introduction and prologue are addressed above all the comparison of the recently adopted and effective (*účinný*) legislation of the insolvency law in the IZ with the preceding and currently obsolete (*zrušený*) regulation of bankruptcy (*konkursní*) proceedings law in the ZKV.

Main points and reasons of the long-term criticism against imperfections and of a deficiency of the ZKV (as frequently discussed in public) shall be underlined.

The actual trends and tendencies of the foreign insolvency (bankruptcy) law regulations directly influencing (affecting) the Czech insolvency law shall be explained as well.

3.2 Dissertation main body (*stat'*)

The dissertation main body consists of three fundamental parts.

The first consists of overview of all specific duties the financial institutions are obliged to obey.

The main part deals with the position of financial institutions as (secured) creditors

and parties to the insolvency proceedings, and that depending on a way (modality) of debtor's bankruptcy dissolution as appointed (elected) in a concrete specific case.

Lastly, the final (third) dissertation part closely focuses on the bankruptcy of financial institutions under the IZ and on their position in the insolvency proceedings.

In this connection, the analysis of relevant EU-directives is provided, including the description of their transposition into the Czech law.

3.3 Conclusion

In the conclusion of the dissertation, all the essential findings of the research are summarized.

In particular, all these areas of the insolvency (bankruptcy) law as well as the stages (phases) thereof are mentioned, where the competences of financial institutions as creditors in the insolvency proceedings have been strengthened.