

Abstract

Power of attorney and its significance in civil law

First, in my thesis I generally dealt with the representations, I outlined the historical development, I mentioned very briefly adjustment of the legal representation and then I examined the conditions a person must meet in order to become a representative. The emphasis was put mainly on the distinction of the various terms associated with the institution of representation by power of attorney, as a unilateral act of the principal. Although the main part of the thesis was focused on adjustment in the Civil Code, I also mentioned provisions of the Commercial Code and a separate chapter is devoted to modify the representation by power of attorney in the Civil Procedure Code. The importance of representation by power of attorney is very significant, so I explored this part in a separate chapter. As this institute is used in practice almost every day, I focused on individual persons authorized to represent and on their most important rights and obligations. The aim of the chapter on certain types of contracts was only to point out some differences between them, not to provide their detailed analysis. An interesting and inspiring chapter then focuses on the comparison of Czech legislation with the legislation of Australia. In the last chapter I tried to outline the most important changes brought into law by the new Civil Code, and also to objectively evaluate such modifications.

The aim of this thesis was to uncover and outline some of the issues which are associated with the institute of representation by power of attorney. However, it is not possible to find a satisfactory answer on all the issues. Personally, I believe that the issues with the representation by power of attorney are because of its ambiguous adjustment. In some aspects there is no consensus even among experts; therefore, it can be hardly used by the general public without any doubts.

The question is whether the new legislation in the new Civil Code solves all these issues. Personally, I think that the new legislation addresses some shortcomings of the current legislation (e.g. in solution of excesses - crossing privileges, other forms of power of attorney than just a written or oral, etc.), it managed to remove some terminological inaccuracies (e.g., provisions on contractual representation are directly called "contractual representation" in contrast to the previous name "representation by power of attorney").

At first, the current legislation of representation by power of attorney seems relatively straightforward and trouble free. On the other hand, a more detailed examination of individual provisions of certain sections comes to the conclusion that some provisions could be relatively easily exploitable. The aim of the new legislation was primarily to make the text of the law clear and understandable, which is benefit not only to the general public but also to the professional public. Whether this new legislation fulfills all these expectations in practice, it will show us the very near future...