

# **Evidence in civil appeal proceedings**

## **Abstract**

The topic of the master's thesis is evidence in civil appeal proceedings with a focus on contentious proceedings. Evidence is often referred to as the backbone of the civil process, as it is supposed to guarantee a fair decision in the case. In appeal proceedings, the importance of evidence is even stronger, as it is used to review the correctness of the contested decision.

The aim of the master's thesis is to provide a comprehensive and complete overview of the legal issue of evidence in civil appeal proceedings, to discuss its most important aspects, to point out deficiencies in the current legislation and propose changes *de lege ferenda*. In order to fulfil the set objectives, the thesis is systematically divided into four chapters.

The first chapter defines the basic terms – procedural evidence and appeal, the understanding of which is crucial for the rest parts of the thesis. In connection with the mentioned terms, the term means of evidence, evidence, subject of evidence and individual types of correction systems – the system of complete and incomplete appeal system, cassation system and revision system, are also characterised here.

The second chapter provides an overview of the most important works of prominent Czech personalities of the civil process. The first subchapter is devoted to the personalities from the period of the First Republic and socialism with a discussion of the development of the legal regulation of evidence in appeal proceedings. The second subchapter focuses on the opinions of contemporary Czech civil process figures.

The third chapter provides a comprehensive analysis of the current legislation. In the individual subchapters, the reader is introduced to the most important aspects of the topic under study. The first subchapter explains the binding of the court of appeal by the facts established by the court of the first instance, focusing on the conditions for deviating from those facts. It also provides a summary of the development and understanding of the principle of double-instance in civil proceedings. The second subchapter deals with the repetition of evidence before the court of appeal pursuant to the provisions of Section 213(2) and (3) of the CPC and also explains the requirements arising from the principles of *viva voce* and straightness. The third subchapter introduces the reader to the issue of completion of evidence by the court of appeal while simultaneously defining the terms new fact and new evidence. The mentioned characteristic is central to the topic of the thesis since new facts and new evidence can be applied in appeal proceedings governed by the principle of incomplete appeal only if they fall under statutory exceptions. This subchapter also states the conditions for exemption from the appellate court's

obligation to complete the evidence. The following subchapter regulates the actual carrying out of the evidence before the court of appeal by setting out the conditions under which the court of appeal is entitled to carry out evidence other than that proposed by the participants. The next subchapter outlines the methods of remedying deficiencies in the instruction under Section 118a of the CPC of the court of first instance, namely in case of failure to fulfil the obligation to instruct and in case of improper fulfilment of the obligation to instruct.

The fourth and last chapter analyzes the relevant parts of the proposed legal regulation of civil proceedings in the second version of the white paper of the new Civil Procedure Code. In the subchapters, the reader is gradually introduced to the proposed legal regulation of evidence, proper remedies and evidence in appeal proceedings.

**Key words: evidence, civil appeal proceedings, contentious proceedings**