

Renunciation contract

Abstract

The presented master thesis deals with the issue of renunciation contract from different perspectives. The thesis offers an analysis of the substantive law and offers answers to selected questions which are not yet clearly answered. Furthermore, it briefly introduces the labour law connected issues.

The research question was answered, which inquired whether the Czech legislator succeeded in re-introducing the institution of renunciation into the Czech legal system in a wording that is compatible with other provisions of the current Civil Code, or whether this only resulted in the de facto adoption of some elements selected inspirational wording of the Institute of Renunciation, without reflecting on the specifics of the Civil code (CC 2012).

The renunciation contract is a multilateral legal act based on the institute of the renunciation of the right to inherit, or renunciation of the right to compulsory portion based on § 1484 present Civil code. It is the only legal instrument for the realization of the disposition with the future inheritance right of the renouncer (the presumed heir) before the death of the future testator.

This contract is primarily intended as a protective tool. It should be a preventive measure against potential inheritance disputes. By its dispositional character, it allows the future testator and his presumptive heir(s) – renunciants to “dispose” of his/their right according to their mutual agreement at the time when this right de facto does not exist. The renunciation itself isn't property transfer nor it is a form of donation.

The legal institute of renunciation (§ 1484 CC 2012) returned to the Czech legal system and could be seen as a breakthrough in the strict principles of property law. The mitigation of these principles is mainly due to the principle of autonomy of will, which is based on the principle of contractual freedom of the parties which gives them power over his property (in the case of the prospective testator) or inheritance right (in the case of renunciants).

This master thesis is based on empirical-theoretical approach and is divided into introductory part where the aim of theses is described, theoretical and practical part, conclusion with summary of findings.

In its first (theoretical) part is presented the clarification of the institute and its characteristic, as well as its selected legal terms and other institutes. It analyses in detail legal rules of the institute of the renunciation of the right to inherit, its interpretation, but also its

application. Furthermore, the theoretical part deals with the historical development of the institute of the renunciation of the right to inherit, as the “foundation stone” of the renunciation contract. It points to the development of the institute in our territory starting from the period of General Civil code (ABGB) to its present.

The second part of the theses, the practical part, focuses on a thorough analysis and teleological analysis of the renunciation contract, on the effort to find a solution to its problematic parts and on the inherent questions that the renunciation contract raises. The last chapters include proposed answers and solutions *de lege ferenda* to some disputed aspects of the application of the renunciation agreement based on author’s findings and argumentation. Those questions arose due to the absence of case law, inconsistent doctrine, and contradictory opinions of experts. *De lege ferenda* recommendations are designed in such a way that the interpretation and purpose of the renunciation contract is non-abuseable and distinctive from other legal acts. The aim of recommendations is also to make a break with the stigma associated with *pactum corvinium*.

The whole thesis is divided into ten chapters. The theoretical part is represented mainly by the first sixth chapters. The first chapter includes the concept and characteristics of the renunciation contract. It focuses on *de lege lata* regulation, presents the concept of renunciation contract, its purpose, classification, definition, interpretation, but also the necessary connections to the provisions of others. The second chapter deals with terminology and selected legal terms related to the renunciation contract, discusses the institute of renunciation of the right to inherit itself and points to other institutes that are closely related to the topic of the thesis. Chapter three presents an outline of the historical development of civil law, starting from the General Civil Code to the new Czech Civil Code. It also discusses the genesis of the institute of renunciation of the right to inherit, its wording in civil codes applied in our territory, their comparison with the Civil Code of 2012, as well as their comparison with each other.

The fourth chapter focuses on the comparison of institutes of renunciation of selected foreign legal orders. Specifically, the Austrian and Swiss legislation. The fifth chapter discusses the motives that led the legislature to re-enlist the institute of renunciation of the right to inherit in the current Civil Code, as well as the motives of individual parties of to the renunciation agreement, which led to its conclusion. Chapter six is the most extensive chapter and explores the requirements of the renunciation contract. It focuses mainly on obligatory and selected non-obligatory requirements and on requirements of the notarial record itself. In this chapter are presented the requirements related to and content of the agreement and the procedure. The demonstration of the practical side of the renunciation contract lies in its synthesis with other

legal acts or synthesis with other institutes. The last chapter of Chapter six deals with the possibilities of cancellation of the renunciation contract. Chapter seven defines the differences between the different types of contracts. The author discusses the advantages and disadvantages of each type of renunciation contracts from the objective point of view. This chapter leads us from the theoretical part of the thesis to the practical part. The eighth chapter deals with the consequences of the renunciation contract in terms of subjective. Among other things, it also deals with a rather serious issue, namely the impact of the renunciation agreement on the descendants of renunciant. This sub-topic of Chapter eight opens the space for Chapter nine, which extensively deals with some questions that have not been answered so far. Questions that are practical and should be addressed due to *de lege ferenda* legislation. In this chapter, therefore, are presented the legislative solutions of foreign legislation as a source of inspiration for the specific institute of relative ineffectiveness and some other legislative shortcomings or gaps in the law as well. The last chapter, the tenth, concludes the thesis by a discussion on the issue of the procedural context of the renunciation contract. It presents the procedural aspect of inheritance disputes, briefly discusses their division, it presents examples related to the renunciation agreement itself, respectively with its consequences. The chapter also mentions intertemporal issues.

Keywords: renunciation contract, renunciation of the right to inherit, renunciation, inheritance law.