

Analysis of the adoption of selected principles of the Roman inheritance law in Central Europe

Abstract

The diploma thesis deals with the analysis of selected principles of Roman inheritance law and their reception in the legal systems of Central Europe, specifically in the Austrian General Civil Code of 1811 and the Czech Civil Code of 2012. It does so through the study of ancient legal sources, modern Roman law literature, modern laws and relevant commentary literature. To compare the application of Roman law principles in modern law, the principle of compulsory share and the principle of *nemo pro parte testatus, pro parte intestatus decedere potest* were chosen. Since the reasons of *delatio hereditatis* and the principles belonging to them represent one of the pillars of the theoretical structure of inheritance law, it is appropriate to stress their Roman law roots. The reason for this examination is also the fact that in many modern codifications of civil law, Roman law is highlighted as an ideal model, and it is therefore necessary to examine whether modern legislation is really influenced by Roman law and whether it is not just a pleasing proclamation by the legislator. The diploma thesis deals with the development of the mentioned principles in the Roman history and also with exceptions from these principles, namely the sequence against the testament and the so-called military will.

The goal of the principle of compulsory share is to secure the closest members of the testator's family after his death. In Roman law, the principle was understood in the same way as today, although the legislation differs in certain aspects. In connection with the compulsory share, the thesis also deals with the issue of disinheritance, which is directly related to the principle of the compulsory share. The principle *nemo pro parte testatus, pro parte intestatus decedere potest* defines the relationship between the testamentary and the intestate succession, as it prohibits the combination of the two successions at the same time, which are usually in opposition to each other. While in Rome it was the determining principle, today it has lost its original meaning and left room for the principle of the testator's freedom of choice. The thesis proves that even though the described cases contain mostly inspiration by the very foundations of inheritance law, and not its literal adoption, we can still talk about the reception of Roman law, its principles and mechanisms of functioning into modern law.

Key words

Roman law; inheritance law; compulsory share; *nemo pro parte testatus, pro parte intestatus decedere potest*