

Discontinuance of Execution according to Sec. 268 (1) (h) of the Code of Civil Procedure focusing on substantive review of an execution title

Abstract

The presented thesis deals with discontinuance of the execution according to Sec. 268 (1) (h) of the Code of Civil Procedure focusing on the possibility and the extent of substantive review of an execution title. This provision was originally intended by the legislator to be relatively abstract or indefinite. It was therefore necessary to introduce the specific circumstances leading to discontinuance of execution due to inadmissibility according to Sec. 268 (1) (h) of the Code of Civil Procedure through the case law. Precisely the considerable vagueness of this provision led to a considerable increase of cases introducing specific situations that led to discontinuance of execution. This thesis therefore aims to analyse Sec. 268 (1) (h) of the Code of Civil Procedure leading to suspension of execution, in particular its purpose in relation to Sec. 268 (1) (a-g) of the Code of Civil Procedure, and further focusing on the topic regarding the possibility of conducting a substantive review of the execution title in the enforcement proceedings.

The first chapter of this thesis focuses on the definition of the essential terms and principles of enforcement proceedings, namely the distinction between trial and execution proceedings as two types of the civil proceedings, the distinction between the terms execution and enforcement proceedings, and 5 selected essential principles of the enforcement proceedings – the principle of officiality, the principle of party disposition, the principle of proportionality and the principle of defense and protection of the debtor.

The second part of the thesis deals with the provision according to Sec. 268 (1) (h) of the Code of Civil Procedure in comparison with other reasons leading to the discontinuance of execution pursuant to Sec. 268 (1) (a-g) of the Code of Civil Procedure, focusing on their competition and the possibility of prioritizing specific reasons leading to discontinuance of execution rather than the "residual" provision of Sec. 268 (1) (h) of the Code of Civil Procedure. The thesis then provides with schematic categorization of specific circumstances that were introduced through the case law leading to discontinuance of execution according to Sec. 268 (1) (h) of the Code of Civil Procedure.

The third chapter deals with a specific topic of the broad issue of discontinuance of execution according to Sec. 268 (1) (h) of the Code of Civil Procedure as a result of a substantive review of an execution title (the possibility of reviewing its compliance with the substantive law). This part of the thesis deals with selected case law of the highest courts

according to Sec. 268 (1) (h) of the Code of Civil Procedure due to inadmissibility of the execution as a result of the substantive review of the execution title, namely concerning three types of an execution title – notarial deed with declaration of enforceability, arbitral award and court decisions. The thesis further deals with the question of the admissibility of such procedure, its conditions, the extent of such review, its compliance with the fundamental principles of the enforcement proceedings, and further selected issues.

The final part of the thesis analyzes the possibility of suspending the execution according to Sec. 268 (1) (h) of the Code of Civil Procedure even when the execution has already been terminated or suspended due to Sec. 268 (1) (a-g) of the Code of Civil Procedure, according to the recent court decisions of the highest courts in the Czech Republic. It deals with the question of compliance of such practice with principles of civil procedure and other related issues.