

Procedural community

Abstract

In civil litigation, it is often possible to encounter a multiplicity of actors on one side of the proceedings; such procedural situation is referred to as a procedural community. According to the current Czech legal regulation of the legal institute in question, which can be considered relatively short, a distinction is made between a separate community and inseparable community in a legal proceeding; the distinguishing criterion here is the nature of the subject matter of the proceedings arising from material law. The thesis first provides an analysis of the previous historical legislation and the theory of the procedural community, and then proceeds with a thorough analysis of the current law. In this respect, the interconnection of the procedural community with various areas and institutes of the civil procedure, such as remedies, local court jurisdiction, injunctive proceedings, costs of the proceedings, main intervention, etc., is commented upon. At the same time, the thesis points out some problems related to the procedural community and tries to provide a proposal for their solution, sometimes also partly with the help of theoretical concepts.

A substantial portion of the thesis is devoted to the comparative part, in which the author takes a closer look at the regulation of the procedural community in Austria, Germany and Switzerland, as these three jurisdictions are close to the Czech legal system and to a certain extent can be referred to as sources of inspiration for the Czech civil procedure. Then German-language civil procedure codes in question often contain more detailed provisions on the procedural community, while explicitly addressing some issues not covered by Czech legislation. However, the Austrian and German regulations can be also described as too casuistic in certain respects, since, according to the author, there are no practical reasons for division of some subtypes of the procedural community.

In the final passage of the thesis, the author discusses some of the ideas concerning the procedural community that were put forward by the authors of the Draft Plan of the Code of Civil Procedure, a conceptual document that was to be the model for the new Code of Civil Procedure. The proposals in question often respond to some of the ambiguities and problems raised in the text.

Key words: procedural community, subjective cumulation, parties to a proceeding