

Statutory Insolvency Trustee?

Guarantees of independence and impartiality in a pre-packaged reorganisation

Abstract

The topic of this thesis is the analysis of the right to a statutory judge enshrined in the Charter and its possible application to insolvency proceedings. In particular, the thesis deals with the interpretation of this right and its possible application to other subjects deciding in individual proceedings (e.g. executors, arbitrators, public prosecutors, and insolvency trustees) and the evaluation of the fulfilment of the guarantees arising from this right in insolvency proceedings.

The first part of the thesis is thus devoted mainly to the analysis of Article 38 of the Charter, identification of the individual components, i.e. the requirements for legal regulation, which arise from this article and determination of specific aspects of the applicability of this article to other proceedings. The starting point in this respect is in particular the decisions of the Constitutional Court.

The second part of the thesis is devoted to the specific requirements arising from the Charter, in particular the guarantees of independence and impartiality of the body deciding the case. It analyses the requirements for the independence and impartiality of courts and judges and compares them with the conditions for insolvency trustees.

The third part of the thesis deals with the application of the identified requirements in the specific case of the appointment of an insolvency trustee on the debtor's proposal in the so-called pre-packaged reorganisations, a very specific issue which already at first sight appears to be risky as regards the exclusion of the insolvency trustee bias in the case. The paper thus concludes with an assessment of the constitutionality of this regulation with *de lege ferenda* proposals.

The thesis is supplemented by a brief empirical research (content analysis), the purpose of which is to place the problem under study in a real economic context, and thus to analyse the sample of reorganisations, the prevalence of different methods of appointing an insolvency administrator and at the same time to evaluate the success rate of insolvency administrators appointed by each method, and thus to relate the theory to insolvency practice at least at a minimum.

Keywords:

Statutory insolvency trustee; Pre-packaged reorganisation; Statutory judge; Independence and impartiality