

# **TAKING OF EVIDENCE**

## **ABSTRACT**

This dissertation deals with the process of taking of evidence in the civil proceeding, while focusing primarily on the contradictory procedure. The differences between the contradictory and non-contradictory procedure are also being highlighted.

The taking of evidence is considered a fundamental part of the civil proceeding, upon whose course and outcomes the judicial decision is being based. In the contradictory procedure, the activity of the party to the proceeding plays a pivotal role in the taking of evidence, which follows primarily from the underlying adversarial principle. However, the importance of the activity of the party to the proceeding in the taking of evidence shall not be entirely dismissed in the non-contradictory procedure either. Nonetheless, the non-contradictory procedure is governed by the investigation principle, with the sole responsibility for the taking of evidence vested in the court. Taking these fundamental differences into account, I analyze the specifics of the contradictory and non-contradictory procedure, which manifest themselves within the sphere of procedural rights and obligations of the parties to the civil proceeding as well as in the distinct powers of the court in the process of taking of evidence.

When writing my dissertation, I have used various resources such as up-to-date periodical literature, publications dealing with the subject matter of taking of evidence as well as the draft bill of the Civil Procedure Code, which has been proposed as part of the recodification of the Czech civil procedure. I also analyze the applicable case law concerning the issues arising in the process of taking of evidence. The key differences between the Czech legal regulation and the German and the Austrian legal regulation are also being highlighted.

In my dissertation I deal with the essence of the process of taking of evidence and the applicable principles of the civil proceeding governing it. Furthermore, I explore, in detail, the respective sources of evidence in the civil proceeding, which I complement with my own perspective on the subject matter and with practical suggestions in relation thereof. The respective stages of the process of taking of evidence are subjected to a thorough examination, with a special focus on the analysis of the procedural rights and obligations of the parties to the civil proceeding and

of the court, which undergo modifications in each of the stages of the process of taking of evidence.

The current legal regulation of the process of taking of evidence and its practical implications from an attorney's perspective are being discussed, while subjecting the procedural actions of the legal representatives of the parties to the civil proceeding and of the court to a critical examination. I confront the existing scholarly opinions on the subject matter of my dissertation as well as the recodification proposal of the Civil Procedure Code. The goal of my dissertation is to examine and discuss the current legal regulation of the process of taking of evidence from a practical point of view, to argue the scholarly opinions on the subject matter and to draw conclusions and make suggestions regarding the potential recodification of the Czech civil law.

## **KEY WORDS**

Civil proceeding, the taking of evidence, sources of evidence