

Proving and burden of proof in civil proceedings

Abstract

The subject of the rigorous thesis is the process of proving in civil proceedings and the related issue of the burden of proof. The thesis therefore focuses primarily on evidence in contested proceedings, since the burden of proof is not generally applied in uncontested proceedings.

The aim of this thesis was to link the theory of procedural evidence and the burden of proof with the current state of the law and current decision-making practice and to critically evaluate this interrelationship. The thesis deals mainly with general issues of the process of proving before the court, such as: who proves (activity of the parties), what is proved (definition of the subject of proof), who has to prove what (the issue of the burden of proof and its distribution), when proof of a certain fact is given (the degree of proof) and how the court can enter into this process, as well as where the limits of this judicial activity are. Individual means of proof are thus, with few exceptions, not subjects of study in this thesis.

The first part of the thesis focuses on the general issues of evidence, its different phases and the principles that influence procedural evidence. Among other things, the issue of the degree of proof is discussed, as well as the question of which evidence not proposed by the parties may be taken by the court on its own initiative in the contested proceedings. The second part of the thesis deals with the theoretical concept of the burden of proof and its various aspects, as well as the obligation and burden of claim that are functionally linked to the burden of proof. In particular, attention has been focused on whether or not it is necessary to prove all the facts claimed by the parties. It was also subject of interest to determine how the burden of proof is generally allocated between the parties and what the exceptions to that basic rule are. The final chapters of this part deal with the explanatory obligation of the party not burdened with the burden of proof and proving of negative facts, topics on which there is no unanimity of opinion among the expert community. The third part examines the possibility for the court to interfere in the process by means of evidence through the powers referred to as substantive conduct of the proceedings. In the Czech legal system, the duty to instruct is the most widely used of these powers or duties of the court. However, it was also necessary to assess where the limits of the court's active role lay in the light of the principle of discussion.

Key words:

Proving, burden of proof, obligation to instruct